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AND

PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA,

1907,

WITH AN INDEX OF CASES;

BEING A SUPPLEMENT TO MR. J. V. WOODMAN'S CONSOLIDATED DIGEST OF INDIAN LAW CASES, 1836-1900.

COMPILED, UNDER THE ORDERS OF THE GOVERNMENT OF INDIA,

BY

(B. D. BOSE)

OF THE INNER TEMPLE BARRISTER-AT-LAW, AND ADVOCATE HIGH COURT, CALCUTTA.

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PREFACE.

THIS volume is published as a further supplement to Mr. J. V. Woodman's Consolidated Digest of Indian Law Cases, 1836-1900. It contains the cases published for the year 1907 in the Indian Law Reports, the Law Reports (Indian Appeals), and the Calcutta Weekly Notes.

Certain changes have been made, which are as stated below :—

(i) for every case which is digested in this volume, the year in which the case was decided is given;

(ii) wherever a case in this volume is published in two or more Reports, the Report from which the head-note is taken is noted first: and the different Reports in which these cases are published are fully noted in the Table of Cases ;

(iii) words and phrases which are expounded in the Reports are entered in a separate list, in alphabetical order, under the heading "Words," which, it is hoped, may prove useful.

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HIGH COURT, CALCUTTA, 1907.

CHIEF JUSTICE:

The Hon'ble Sir Francis W. Maclean, Kt., K.C.I.E.
" Mr. R. F. Rampini (*Acting Chief Justice*).

PUISNE JUDGES:

The Hon'ble Sir Chandra Madhab Ghose, Kt. (*retired, Jany. 2*).
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" " S. G. Sale (*retired, October 8*).
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ADVOCATE GENERAL:

The Hon'ble Mr. P. O'Kinealy.

STANDING COUNSEL:

Mr. S. P. Sinha.
" W. G. Gregory (*Offg.*).

HIGH COURT, BOMBAY, 1907.

CHIEF JUSTICE:

The Hon'ble Sir Lawrence H. Jenkins, Kt., K.C.I.E.
" Mr. L. P. Russell (*Acting*).

PUISNE JUDGES:

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" " S. L. Batchelor.
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HIGH COURT, MADRAS, 1907.

CHIEF JUSTICE:

The Hon'ble Sir Charles Arnold White, Kt.

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The Hon'ble Sir S. Subrahmania Ayyar, K.C.I.E., Diwan Bahadur (*retired Nov 13, 1907*).
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HIGH COURT, ALLAHABAD, 1907.

CHIEF JUSTICE:

The Hon'ble Sir John Stanley, Kt., K.C.
" " George E. Knox, Kt. (*Acting Chief Justice*).

PUISNE JUDGES:

The Hon'ble Sir George E. Knox, Kt.
" Mr. P. C. Banerji.
" Sir William Burkitt, Kt.
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OF

THE HIGH COURT REPORTS

AND OF

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ACTIONABLE CLAIM.

1.—*Assignment of contract—Transfer of Property Act (IV of 1882), ss. 6 (h), 130—Contract Act (IX of 1872), s. 23—Fraudulent object.*—Property under a contract which an assignor can pass to an assignee, is an "actionable claim" within the meaning of s. 130 of the Transfer of Property Act and would under s. 7 of the Indian Insolvent Act vest in the Official Assignee on the insolvency of the assignor. Under the joint action of s. 6 (*h*) of the Transfer of Property Act and s. 23 of the Contract Act where the object of an assignment is fraudulent, the assignment is void and inoperative. *Decision of Sale J. in I. L. R. 33 Calc. 702* affirmed. JAFFER MEHER ALI *v.* BUDGE-BUDGE JUTE MILLS COMPANY . **I. L. R. 34 Calc. 289**

2. —*Transfer of Property Act (IV of 1882), s. 130—Claim not actionable unless cause of action already matured—Set-off—Debtor can set off against assignee independent claims against assignor—Right of set-off lost by conduct amounting to discharge of claim sought to be set off—Principal and surety—Mortgagor postponing right does not lose his personal remedy—Decree, when conditional on result of a different suit.*—Under s. 130 of the Transfer of Property Act as it stood before it was amended by Act VI of 1900, a claim was not actionable unless it was "a claim in respect of a cause of action which has already matured and which subject to procedure may be enforced by suit." *Shib Lal* v. *Azmat Ullah, I. L. R. 18 All. 265*, followed. In an action by the assignee of a debt, the debtor-defendant is entitled to set off debt due to him by the assignor at the date of the assignment, even when the amount claimed to be set off is due under a

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transaction independent of and unconnected with the claim assigned to plaintiff. Such right of set-off will not be open to the defendant, if by his conduct he has given up his right to proceed against the assignor personally for the debt. A mortgagee who consents to postpone his rights and accept the position of a second mortgagee, with the concurrence of the mortgagor, does not thereby lose his personal remedy against the mortgagor. Where a debtor transfers his property, with directions to pay off his debts, to a trustee who does not undertake any personal liability to the creditors, the relationship of principal and surety is not constituted between the trustee and debtor, respectively. The fact that the defendant in a suit by the assignee is prosecuting a suit against the assignor, in which he might be awarded certain equitable reliefs against the assignor, is no ground for refusing an unconditional decree to the assignee in his suit, unless the claims in the two suits are based on obligations arising out of the same contract and are so closely intertwined with each other as to make it equitable that they should be set against one another. *Government of Newfoundland* v. *Newfoundland Railway Company. L. R. 13 A. C. 212*, referred to and distinguished. *Fleming* v. *Loe, 2 Ch. D. 594*, referred to and distinguished. ARUNACHELLAM CHETTI *v.* SUBRAMANIAN CHETTI (1906) . **I. L. R. 30 Mad. 235**

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ADEN COURTS ACT (II OF 1864).

—ss. 29, 30—*Court of Resident at Aden—Suits tried by Resident as a Court of Session—Appeals heard by Resident Application for revision against both to the High Court of Bombay—Certificate of the Advocate-General.*—There is nothing in s. 29 or 30 of the Aden Courts Act (II of 1864) which can operate either by express words or by necessary implication to limit the application of those sections to cases tried by the Resident as a Court of Session or to exclude appeals from their purview. S. 30 of the Aden Courts Act (II of 1864) empowers and requires the High Court of Bombay to review the case or such part of it as may be necessary, with reference only to the points of law specified in the certificate of the Advocate-General. The section does not contemplate that any decision by the Resident on a point of fact should be questioned in review, save in so far as such decision may be dependent for its validity on the determination of a point of law mentioned in the certificate. EMPEROR *v.* BHAGWANDAS (1907). **I. L. R. 31 Bom. 335**

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ADMINISTRATOR-GENERAL.

—*Administrator-General's Act (II of 1874), s. 18—Administrator-General holding estate under s. 18, position of—Administrator-General, what payments can be made by.*—The Administrator-General holding an estate under s. 18 of the Administrator General's Act is in no better position than a private administrator. Pending grant of letters of administration, he can only make payments for the benefit of or for the preservation of the assets of the estate. He cannot make any payment to the prejudice of the estate. *Morgan* v. *Thomas*, 8 *Exch. Rep.* 302 *at p.* 307, referred to. HARI DAS DUTT, *In the goods of* (1906).
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ADMINISTRATOR GENERAL'S ACT (II OF 1874).

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ADOPTION.

See CIVIL PROCEDURE CODE, S. 13.
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See HINDU LAW.

—*Question of adoption—Civil Procedure Code, s. 13 Res judicata—Award of committee of talukdars appointed under s. 3 of the Oudh Estates Act (I of 1869)—Claim in former suit as adopted son—Estoppel—Evidence and proof of adoption Evidence of adoption where lapse of time precludes proof—Presumption as to probability from conduct of parties.*—In a suit by the appellant against the respondent for a share in certain family property the question was whether the respondent had been in 1853 validly adopted into another family. *Held*, that the committee of talukdars appointed under s. 33 of Act I of 1869 (Oudh Estates Act) to decide on claims for maintenance is not such a Court as is described by s. 13 of the Code of Civil Procedure (Act XIV of 1882), and their award refusing the respondent maintenance in his own family on the ground that he had been adopted into another was therefore not *res judicata* in the present suit. The committee had no jurisdiction to decide the question of adoption, and the affirmation of their award by the Financial Commissioner could not give judicial validity to their decision on a point outside their jurisdiction. The fact that the respondent had in 1879 on the death of his alleged adoptive mother claimed to succeed her as the adopted son of her deceased husband and so secure the succession to which the predecessor in title of the appellant was then entitled, though he did not oppose the respondent's claim, did not estop the respondent from denying the alleged adoption in this suit. To establish the fact of a valid adoption it was essential for the appellant to show that it was made by the direction of the deceased husband of the adoptive mother, and that the respondent's father had given him in adoption. In the absence of proof, which the lapse of time made impossible, it was incumbent on the appellant, before any presumption that those conditions were fulfilled was justified, to establish an initial probability that the adoption was likely to have been validly made, and that the conduct of the parties cognizant of the facts had at least been consistent with such an hypothesis. But the evidence rather showed the contrary; and no weight could be given to the statements of the respondent, as they fell short of founding an estoppel, and as he had asserted or denied the adoption just as it suited his purpose throughout the whole of the protracted litigation between the members of the family. HARSHANKAR PARTAB SINGH *v.* RAGHURAJ SINGH (1907) . . . . I. L. R. 29 All. 519

ADULTERY.

——living in—

—*Criminal Procedure Code, s. 488, cl. 4—Living in adultery refers to course of conduct.*—A single act of adultery does not necessarily amount to "living in adultery" within the meaning of s. 488, cl. 4 of the Code of Criminal Procedure, and will now justify a Magistrate in refusing maintenance. "Living in adultery" refers to a course of conduct and means something more than a single lapse from virtue. *Kallu* v. *Kaunsilia, I. L. R. 26 All. 326*, followed. PATALA ATCHAMMA *v.* PATALA MAHALAKSHMI (1907) . . . . I. L. R. 30 Mad. 332

ADVERSE POSSESSION.

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ADVERSE POSSESSION—*concluded.*

1.—*Limitation Act (XV of 1877), Sch. II, Art. 144—Limitation—Lease—Possession derived from a lessee not necessarily adverse as against the lessor.*—*Held,* that possession acquired during the continuance of a lease will not ordinarily be adverse possession as against the lessor until at any rate such time as the lessor becomes entitled to possession. The principle of *Muhammad Husain* v. *Mul Chand, I. L. R. 27 All. 395; Sharat Sundari Dabia* v. *Bhobo Pershad Khan Chowdhuri, I. L. R. 13 Calc. 101; Womesh Chunder Goopta* v. *Raj Narain Roy, 10 W. R. 15; Krishna Gobind Dhur* v. *Hari Churn Dhur, I. L. R. 9 Calc. 367; Sheo Sohye Roy* v. *Luchmeshur Singh. I. L. R. 10 Calc. 577,* and *Gunga Kumar Mitter* v. *Asutosh Gossami, I. L. R. 23 Calc. 863,* followed. *Bejoy Chunder Banerjee* v. *Kally Prosonno Mookerjee, I. L. R. 4 Calc. 327,* referred to. *Lekhraj Roy* v. *The Court of Wards on behalf of the Rajah of Durbhangah, 14 W. R. 395; Brindaban Chunder Sircar Chowdhry* v. *Bhoopal Chunder Biswas, 17 W. R. 377; Prosunnomoyi Dasi* v. *Kali Das Roy, 9 C. L. R. 377;* and *Gobinda Nath Shaha Chowdhry* v. *Surja Kanth Lahiri, I. L. R. 26 Calc. 460,* not followed. THAMMAN PANDE *v.* THE MAHARAJAH OF VIZIANAGRAM (1907).

I. L. R. 29 All. 593

2.—*Possession by guardian primâ facie not adverse to the ward—Hindu Law—Reversioner, acceleration of succession of—No acceleration where gift to presumptive reversioner subject to obligations.*—It is well established that possession is never to be considered adverse if it can be referred to any lawful authority. Possession of the ward's property by a guardian will be presumed to be on behalf of the ward and will not in the absence of evidence to the contrary be held to be adverse to the ward. A gift by a Hindu widow of property in which she has a widow's estate to the presumptive reversioner has not the effect of accelerating the succession of such reversioner, if the transfer imposes on the reversioner obligations which would not have existed if the property had devolved on him by inheritance. SRIRAMULU NAIDU *v.* ANDALAMMAL (1906).

I. L. R. 30 Mad. 145

ADVOCATE.

1.—*Dismissal of Advocate from his office for professional misconduct—Charge of advising client to bribe a witness—Evidence, admissibility of —Evidence Act (I of 1872), ss. 154, 155, cl. (3), 157—Probabilities of case.*—The appellant, an Advocate of the Chief Court of Lower Burma, was charged with having, whilst employed as an Advocate for the prosecution of certain persons being tried at the Criminal Sessions of the Court for the abduction of a girl, the daughter of one Ohn Ghine, advised Ohn Ghine to bribe a European witness in the case, the Government of India expert in handwriting, and with being "thereby guilty of gross professional misconduct." The

ADVOCATE—*continued.*

charge was founded on short and hurried conversations (one in the corridor of the Court and the other in the Court itself) with his senior conducting the case, who, without being able to give the exact words, stated that the appellant had used expressions to the effect that he (the appellant) had done a thing he had never done before and had advised Ohn Ghine to bribe the witness. The appellant denied having done so, or having used any such expressions as alleged. Ohn Ghine stated that the appellant had hinted to him that the witness should be "watched," and it was found as a matter of fact that he was watched, but there was no evidence that any one bribed or attempted to bribe him. The Chief Court, after examining witnesses and considering the evidence, found the appellant guilty and dismissed him from his office as an Advocate of the Court. *Held,* that the evidence of persons, to whom his senior had, in the absence of the appellant, repeated the conversations out of which the charge originated, though admissible in evidence under s. 157 of the Evidence Act, did not carry any further the determination of the real issue, whether the appellant did in fact advise Ohn Ghine to bribe the witness. Particulars given by his senior of interviews he had with Ohn Ghine, in the absence of the appellant and statements then made by Ohn Ghine; and particulars given by the Government Advocate of a conversation between Ohn Ghine and himself had been admitted in evidence by the Chief Court *Held,* that such evidence was inadmissible for the purpose of impeaching Ohn Ghine's credit under s. 155, cl. (3) of the Evidence Act, or against the appellant, and that there was, therefore, no direct evidence except that of the Senior Counsel conducting the case and this, having regard to the fact that he could not remember the exact words used, and that the words deposed to were innocent or otherwise according to the context, and considering also the circumstances under which both conversations took place, was insufficient to support the grave charge made against the appellant. BOMANJEE COWASJEE, *In the matter of* (1906).

I. L. R. 34 Calc. 129; L. R. 34 I. A. 55

2.—*Power of High Court to deal with Advocate who is also a member of the English Bar —Constitution of Bench of High Court under Rules of Court—Rules 2, 180, 181, 197—Letters Patent, cls. 7, 8—Misconduct—Libel on the Judges—Contempt of Court—"Reasonable cause" for suspension.*—The High Court at Allahabad is not precluded from dealing under the Letters Patent of the Court with an advocate of the Court for misconduct by reason of his being a member of the English Bar. By rule 2 of the High Court Rules, a Bench of three Judges of the Court is a tribunal properly constituted to deal with a charge of misconduct made against an advocate of the Court. Rule 197 does not make a Bench of five Judges necessary in such a case, but only provides for cases in which the High Court may for good cause and without charge or trial suspend or remove from the roll any

ADVOCATE--*concluded.*

advocate of the Court. After an altercation, during the hearing of a case, with one of the Judges of the High Court, in the course of which he alleged that he had been told by the Judge to "hold his tongue" and to "sit down" an advocate of the Court attempted to defend his conduct by publishing in a newspaper, of which he was the editor, an article which was a libel reflecting not only on the Judge before whom he had appeared but upon other Judges of the Court in their judicial capacity, and in reference to their conduct in the discharge of their public duties, and which amounted to a contempt of Court which might have been dealt with as such by the High Court. *Held*, that such publication constituted under cl. 8 of the Letters Patent of the Court "reasonable cause" for an order suspending the advocate from practising. Such publication was not excusable on the ground that it was written in his capacity as editor of the newspaper and not in his capacity as an advocate. The controversy arose from the misbehaviour of the advocate conducting a case before the Court, and the contempt of which he was found guilty was committed in the attempt to vindicate his professional conduct in a publication for which he was solely responsible. *In re Wallace, L. R. 1 P. C. 283*, distinguished. SARBADHICARY, S. B., *In re* (1906) . . **I. L. R. 29 All. 85; L. R. 34 I. A. 41**

3.—*Unprofessional conduct—Arrangement with client without intervention of Solicitor—Threat—Compensation.*—An advocate of the High Court made an arrangement to do professional work for his client, without the intervention of a solicitor, at a fee of half the usual charge; and, on another occasion, he wrote to the same client to the effect that he had an offer to work professionally against her (the client) in a case the plaint of which was settled by him for her, and unless she paid him ten gold mohurs (five times the usual fee) for refusing the brief offered, he would take up the case against her. *Held*, that the advocate was guilty of highly unprofessional conduct **S. K. H., AN ADVOCATE**, *In re* (1907).

I. L. R. 34 Calc. 729

AGGREGATE VALUE.

See **APPEAL TO PRIVY COUNCIL.**

I. L. R. 34 Calc. 400

AGRA TENANCY ACT (II OF 1901).

—— ss. 20, 21, 31—

—Occupancy holding—Rights of alienation possessed by occupancy tenants—Mortgage.—*Held*, that the law enacted in ss. 20, 21 of the Agra Tenancy Act, 1901, obliterates any distinction which might have existed or have been supposed to exist between the right of occupancy and the right to occupy wherever transfers were made or contemplated by tenants, and that the tenants mentioned in these sections can no longer

AGRA TENANCY ACT (II OF 1901)—*continued.*

transfer either the right of occupancy or the right to occupy otherwise than by a sub-lease. A subsequent mortgagee of an occupancy holding, whose mortgage was executed after the coming into force of the Agra Tenancy Act, has therefore no right to redeem a prior mortgage over the same holding. *Khiali Ram* v. *Nathu Lal, I. L. R. 15 All. 219*, and *Brij Mohan Das* v. *Algu, I. L. R. 26 All. 78*, distinguished. *Madan Lal* v. *Muhammad Ali Nasir Khan, Weekly Notes, 1906, 182*, approved. **BANMALI PANDE** *v.* **BISHESHAR SINGH** (1906) . **I. L. R. 29 All. 129**

—— ss. 20, 21, 31—

—Occupancy holding—Usufructuary mortgage—Act No. IX of 1872 (Indian Contract Act), s. 23.—An occupancy tenant executed a usufructuary mortgage of his occupancy holding, and then executed a kabuliat undertaking to pay rent for the mortgaged land. *Held*, on suit by the mortgagee for rent under the terms of the kabuliat, that the agreement between the parties was of a nature which, if permitted, would defeat the provisions of the Tenancy Act, 1901; that it was unlawful within the meaning of s. 23 of the Contract Act, and void. *Harnandan Rai* v. *Nakchedi Rai, Weekly Notes, 1906, 302; Banmali Pande* v. *Bisheshar Singh, L. R. 29 All. 129*, and *Madan Lal* v. *Muhammad Ali Nasir Khan, I. L. R. 28 All. 696*, followed. **RAM SARUP** *v.* **KISHAN LAL** (1907) . **I. L. R. 29 All. 327**

—— s. 32—

—Occupancy holding—Jurisdiction—Civil and Revenue Courts.—Where plaintiffs sued in a Civil Court for possession under an agreement of part of an occupancy holding: *Held*, that the suit would not lie, being contrary to the intention of s. 32 of the Agra Tenancy Act, 1901. **ACHHEY LAL** *v.* **JANKI PRASAD** (1906) . **I. L. R. 29 All. 66**

—— ss. 53, 197—

—Civil Procedure Code, s. 45—Joint suit for arrears of rent of several holdings.—*Held*, that the provisions of s. 45 of the Code of Civil Procedure do not apply to a suit for arrears of rent under the Agra Tenancy Act, 1901, so as to admit of a joint suit being brought in respect of arrears of rent due in respect of several holdings. On the contrary, the Act contemplates that one suit should be brought in respect of each separate holding. **JAGAN NATH PARSAD** *v.* **TORI** (1906) . **I. L. R. 29 All. 18**

—— ss. 156, 164 (2)—

—Lambardar and co-sharer—Liability of successor in office for uncollected profits.—*Held*, that the successor in title of a deceased lambardar is not liable to account for profits which his predecessor may have failed to collect or which he permitted to remain uncollected owing to negligence or misconduct. **DIP SINGH** *v.* **RAM CHARAN** (1906).

I. L. R. 29 All. 15

AGRA TENANCY ACT (II OF 1901)— *concluded.*

—— ss. 176, 177, 182—

—Jurisdiction - Appeal.—Held that no third appeal will lie to the High Court from a decree of the District Judge passed in appeal from an appellate decree of the Collector under the provisions of the Agra Tenancy Act, 1901. *Lachmi Narain* v. *Nirotam Das, Weekly Notes, 1906, 251,* followed. LACHMI NARAIN *v.* NIROTAM DAS (1906).
I. L. R. 29 All. 69

——s. 199—

—Determination by Revenue Court of question of proprietary title—Res judicata. —Where in a suit filed in a Revenue Court a question of proprietary title is raised and the Court, acting under s. 199 of the Agra Tenancy Act, elects to determine such question itself, such decision of the Revenue Court will operate as *res judicata* in respect of a subsequent suit in a Civil Court for determination of the same question. *Salig Dube* v. *Deoki Dube, Weekly Notes, 1907, 1,* followed. BENI PANDE *v.* RAJAH KAUSAL KISHORE PRASAD MAL BAHADUR (1906).
I. L. R. 29 All. 160

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See EJECTMENT, SUIT FOR.
I. L. R. 29 All. 601

——s. 201—

—Act No. I of 1872 (Indian Evidence Act), s. 4—Evidence—Record of plaintiff's name as a co-sharer—Presumption.—The presumption enjoined by cl. (3) of s. 201 of the Agra Tenancy Act is not conclusive, even in a Revenue Court, but may be rebutted, as for instance, by evidence showing that the plaintiff has not been in possession of the property in respect of which profits are claimed for more than twelve years before suit, and the defendants have openly denied the plaintiff's title for more than that period. *Niaz Ali Khan* v. *Gobind Ram, F. A. F. O. No. 70 of 1904, decided May 22, 1905,* distinguished. DIL KUNWAR *v.* UDI RAM (1906).
I. L. R. 29 All. 148

——s. 201—

—Suit for profits—Receipt of profits within 12 years of suit denied—Plaintiff's recorded co-sharers—Burden of proof.—The plaintiff's recorded co-sharers sued another co-sharer for profits. The defendant pleaded that the plaintiffs or their predecessors in title had not received profits within twelve years preceding the institution of the suit, and that the suit was time-barred. *Held,* that it was not for the plaintiffs to prove by evidence of receipt of profits within twelve years that the right subsisted; and that s. 201 of the Agra Tenancy Act, 1901, raised a presumption in their favour. *Mihin Lal* v. *Badri Prasad, I. L. R. 27 All. 436,* referred to. BANWARI LAL *v.* NIADAR (1906).
I. L. R. 29 All. 158

AGREEMENT.

See CONTRACT.

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——opposed to public policy—

—Contract Act (IX of 1872), s. 23—Promise to pay money to procure resignation of public office not enforceable.—An undertaking to pay money to a public servant, to induce him to retire and thus make way for the appointment of the promisor, is virtually a trafficking with reference to an office and is void under s. 23 of the Contract Act. *Parson* v. *Thompson, 1. H. L. 322; 2 R. R. 773,* followed in principle. SAMINATHA AIYAR *v.* MUTHUSAMI PILLAI (1907).
I. L. R. 30 Mad. 530

ALIENATION.

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1. ABATEMENT OF APPEAL.

See SUBSTITUTION OF NAMES.
11 C. W. N. 698

1.—*No abatement by death of respondent when appeal could proceed in the absence of his representative.*—An appeal does not abate by reason of the failure of an appellant to bring on record the representative of a deceased respondent within the time prescribed therefor, if the appeal can proceed in the absence of such representative to a final and complete adjudication. RENGA SRINIVASA CHARI *v.* GNANAPRAKASA MUDALIAR (1906).
I. L. R. 30 Mad. 67

2.—*Legal representative—Civil Procedure Code (Act XIV of 1882), ss. 368, 582—Substitution—Suit by joint-owners to set aside revenue sale—Death of some of plaintiffs, respondents, during pendency of appeal.*—During the pendency of an appeal against a decree setting aside the sale of a joint estate for arrears of revenue, two of the plaintiffs, respondents, died and there was no application for substitution of the heirs of the deceased respondents, the right to sue not surviving against the other respondents. *Held,* that the appeal should abate inasmuch as the decree could not be reversed without the representatives of the deceased being placed on the record. That under no circumstances could the decree be affirmed as to the unascertained shares of some joint shareholders and reversed as to the unascertained shares of the other joint share-holders. DHARANJIT NARAYAN SINGH *v.* CHANDESHWAR PROSAD NARAYAN SINGH (1907).
11 C. W. N. 504

2. ARBITRATION.

3.—*Private award—Civil Procedure Code (Act XIV of 1882), ss. 525, 526—Private award, decree made on.*—A private award having been filed by one of the parties under s. 525, Civil Procedure Code, the other party objected, and his objections were overruled. *Held,* that no appeal lay from a decree made in accordance with the award. GEIDT, *J.*—The only questions that can be brought before an Appellate Court in proceedings under ss. 525 and 526 of the Civil Procedure Code are (1) Whether any matter has been referred to arbitration without the intervention of the Court and an award made thereon, (2) Whether the decree ultimately made is in excess of or not in accordance with the award. *Ghulam Jilani* v. *Muhammad Ahmed, 6 C. W. N. 226,* and *Janokey Nath Guha* v. *Brojo Lal Guha, 10 C. W. N. 609* considered. ABDUL ALI *v.* ANWAR ALI (1906). . . 11 C. W. N. 22

APPEAL—*continued.*

4.—*Civil Procedure Code, ss. 521, 522—Arbitration—Award—Decree on judgment in accordance with the award—Appeal.*—The matters in dispute between the parties to a suit pending in the Court of a Munsif were referred to arbitration. An award was delivered by the arbitrator to which objections were filed to the effect that the arbitrator had been guilty of misconduct. The objections were, however, overruled and a decree was passed which was in accordance with, and not in excess of, the terms of the award. *Held,* that no appeal from such a decree would lie, the sole ground being that the arbitrator had been guilty of misconduct. *Sham Lal* v. *Misri Kunwur, I. L. R. 29 All. 426,* distinguished. *Ghulam Khan* v. *Muhammad Hassan, I. L. R. 29 Calc. 167,* followed. BIHARI LAL *v.* CHUNNI LAL (1907).

I. L. R. 29 All. 457

5.—*Civil Procedure Code, s. 522—Award—Decree on award made without allowing time to file objections.*—An appeal will lie from a decree passed in accordance with an award if such decree has been passed without allowing to the parties the time prescribed by law for filing objections to the award. *Ibrahim Ali* v. *Mohsin Ali, I. L. R. 18 All. 422,* and *Maharajah Joymungul Singh Bahadur* v. *Mohun Ram Marwaree, 23 W. R. 429,* followed. NAJM-UD-DIN AHMAD *v* PUECH (1907).

I. L. R. 29 All. 584

3. EXECUTION OF DECREE.

6.—*Civil Procedure Code, s. 244—Small Cause Court decree—Execution—Transfer to regular Court—Order in execution—Second appeal—Civil Procedure Code (Act XIV of 1882), ss. 244, 586.*—Where a Small Cause Court decree was sent for execution to the regular Court of the district and an order was passed under s. 244, Civil Procedure Code, by that Court (which was a Court of a Sub-Judge): *Held,* that an appeal lay to the Court of the District Judge against such order. But the value of the decree being less than R500 a second appeal was barred by s. 586, Civil Procedure Code. PEARY LAL SING *v.* RADHA NATH SINGH (1907).

11 C. W. N. 861

7.—*Civil Procedure Code, s. 244—Legal representative.*—When an application by the executor to the estate of a Hindu lady to execute a decree which fell to her share upon a partition of her husband's estate between herself and her sons, was refused on the objection of the sons and the judgment-debtors that the lady had only a life-interest in the decree and that it passed on her death to her sons: *Held,* that appeal lay from the order under s. 244, Civil Procedure Code, the question arising being a question between the legal representative of the lady and the judgment-debtors. HRIDOY KANT BHATTACHERJEE *v.* BEHARI LAL MOOKERJEE (1906) . . . . . **11 C. W. N. 239**

8.—*Civil Procedure Code (Act XIV of 1882), ss. 320, 310A and 244—Execution of decree—Sale by Collector—Application to Court by judgment-debtor to set aside sale—Refusal by the Court—Collector's power—Rules 16 and 17 of*

APPEAL—*continued.*

the Local Rules and Orders made under enactments applicable to Bombay.—A decree having been transferred to the Collector for execution under s. 320 of the Civil Procedure Code (Act XIV of 1882), he sold certain properties. Thereupon the judgment-debtor applied to the Court for the setting aside of the sale under s. 310A of the Code. The Court refused to set aside the sale on the ground that there was another decree-holder who had taken action under s. 295 of the Code, and that it was incumbent on the judgment-debtor to pay into Court a sum sufficient to answer his claim. On appeal by the judgment-debtor the Judge dismissed the appeal on the ground that no appeal lay. *Held,* on second appeal by the judgment-debtor, that the order was appealable. An appeal lies from an order under s. 310A of the Code where the case falls under s. 244 (*c*). *Murlidhar* v. *Anandrao, I. L. R. 25 Bom. 418,* qualified. PITA *v.* CHUNILAL (1906).

I. L. R. 31 Bom. 207

4. REMAND.

9.—*Order of remand—Civil Procedure Code, ss. 586, 588.*—An appeal from an order of remand passed by the Appellate Court is specifically given by cl. (28) of s. 588, Civil Procedure Code, and s. 586, Civil Procedure Code, which bars a second appeal to suits of a Small Cause Court nature of below R500 in value, does not exclude an appeal from an order of remand passed in such a suit. AGANDH MAHTO *v.* KHAGAL ALIULLAH (1907).

11 C. W. N. 862

10.—*Civil Procedure Code, s. 562—Remand, order of—Appeal from order of remand after decision of the suit in accordance therewith.*—*Held,* that no appeal will lie from an order of remand passed under s. 562 of the Code of Civil Procedure if such appeal is filed after the suit has in compliance with the order of remand been decided and no appeal is preferred from the decree in the suit. *Madhusudan Sen* v. *Kamini Kanta Sen, 9 C. W. N. 895,* followed. *Rameswar Singh* v. *Sheodin Singh, I. L. R. 12 All. 510,* distinguished. SALIG RAM *v.* BRIJ BILAS (1907).

I. L. R. 29 All. 659

5. RIGHT OF APPEAL.

11.—*Companies Act (VI of 1882), ss. 169, 177, 185, 189, 191—Order refusing supervision order under s. 191 appealable under s. 169—Liquidator, duties of—Where liquidators appointed under s. 185, misbehave, supervision order must be made by Court on the motion of creditors.*—The right of appeal conferred by s. 169 of the Indian Companies Act extends to all orders or decisions made or given in the matter of the winding up of a company whether the winding up be compulsory, voluntary, or under supervision. An order refusing to make a supervision order under s. 191 is appealable under s. 169. The duties imposed upon liquidators by s. 177 of the Act cannot be delegated by them to others. Liquidators appointed by the Company under s. 177 can be removed only by the Court under s. 185 and are not subject to the control of the company in the performance of their duties. Where

APPEAL—*continued.*

the liquidators on insufficient grounds refuse to deal with the claim of a creditor on its legal merits, the Court is bound to grant a supervision order on the application of such creditor. KESAVALOO NAIDU *v.* MURUGAPPA MUDALI (1906).

I. L. R. 30 Mad. 22

12.—*Account—Endowment—Religious Endowments Act (XX of 1863), s. 18—Order granting leave to sue—"Decree"—Civil Procedure Code (Act XIV of 1882), s. 2.*—No appeal lies from an order made by the District Judge under s. 18 of Act XX of 1863 granting leave to bring a suit for the purpose of having the accounts taken of a religious endowment. Such an order is not a "decree" within the meaning of s. 2 of the Code of Civil Procedure. *Kazem Ali* v. *Azim Ali Khan, I. L. R. 18 Calc. 882*, referred to. MOZAFFER ALI *v.* HEDAYET HOSAIN (1907) . . **I. L. R. 34 Calc. 584**

13.—*Civil Procedure Code, ss. 310, 588 (8)—Order refusing to restore an application under s. 310 which had been dismissed for default of appearance.—Held,* that no appeal lies from an order refusing to restore to the file of pending applications an application under s. 310 of the Code of Civil Procedure which has been dismissed for default of appearance. The principle applied in *Jung Bahadur* v. *Mahadeo Prosad, I. L. R. 31 Calc. 207*; *Ningappa* v. *Gangawa, I. L. R. 10 Bom. 433*; and *Raja Sirnivasa, I. L. R. 11 Mad. 319*, followed. GHASITI BIBI *v.* ABDUL SAMAD (1907).

I. L. R. 29 All. 596

6. MISCELLANEOUS.

14.—Delay in filing appeal—*Limitation Act (XV of 1877), ss. 5, 14—Delay due to appellant bonâ fide accepting erroneous legal advice.*—Where a client *bonâ fide* accepts the advice of counsel as to the proper procedure to adopt in the course of litigation, and misled by that advice fails to file an appeal within time, he is entitled to the benefit of s. 5 of the Indian Limitation Act, 1877. *Balwant Singh* v. *Gumani Ram, I. L. R. 5 All. 591*; *Brij Mohan Das* v. *Mannu Bibi, I. L. R. 19 All. 348*; and *Kura Mal* v. *Ram Nath, I. L. R. 28 All. 414*, followed. *In re Coles and Ravenshaw*, [1907] *1 K. B. 1*, referred to. ANJORA KUNWAR *v.* BABU (1907) . . . . **I. L. R. 29 All. 638**

15.—Appeal in formâ pauperis—*Civil Procedure Code (XIV of 1882), ss. 407, 592—Applications under s. 592 to be decided under the rules in Chapter XXVI—No leave to appeal in formâ pauperis when at date of suit there is subsisting an agreement falling under s. 407 (d).*—Although the question of the representation of an appeal *in forma pauperis* is not subject to the rules contained in Chapter XXVI of the Code of Civil Procedure, the question of the right to appeal under s. 592 of the Code of Civil Procedure is subject to such rules. *Mailthi* v. *Somappa Banta, I. L. R. 26 Mad. 369*, distinguished. When, at the time of the institution of the suit, there was subsisting an

APPEAL—*concluded.*

agreement falling within the terms of s. 407 (*d*), no leave to appeal under s. 592 can be given to the plaintiff who, by such agreement, had allowed other persons to obtain an interest in the subject-matter of the suit. HANIFA BAI *v.* HAJI SIDDICK BUI MEANJI SAIT (1907).

I. L. R. 30 Mad. 547

16. Suit for adjustment of accounts—*Two appellate decrees in similar terms—Appeal from one of such decrees only—Res judicata.*—From the decree in a suit for adjustment of accounts both parties appealed. Both appeals were decided by one and the same judgment. Two decrees were framed; but these were in substance identical. The plaintiff appealed from the decree in one appeal only. *Held*, that his appeal was not barred by reason of his not having appealed also from the decree in the other appeal. *Mariam-nissa Bibi* v. *Joynab Bibi, I. L. R. 33 Calc. 1101*, and *Panchanada Velan* v. *Vaithinatha Sastrial, I. L. R. 29 Mad. 333*, followed. DAMODAR DAS *v.* SHEORAM DAS (1907) . **I. L. R. 29 All. 730**

APPEAL IN CRIMINAL CASES.

—*Criminal Procedure Code (Act V of 1898), s. 195 (6)—Appeal lies to High Court against an appellate order revoking sanction granted by Court of First Instance.*—The right of appeal conferred by s. 195 (6) of the Code of Criminal Procedure as read with sub-s. (7) of the same section is not restricted to a right of appeal to the Appellate Court to which the Court of First Instance is immediately subordinate. The revocation by the Appellate Court of a sanction given by the Court of First Instance is a refusal of sanction within the meaning of sub-s. (6) and an appeal lies therefrom to the High Court, as well as in cases where the sanction refused by the Court of First Instance is granted by the Appellate Court *Palaniappa Chetti* v. *Annamalai Chetti, I. L. R. 27 Mad. 223*, approved. An order revoking a sanction is a refusal of a sanction just as an order confirming a sanction is an order giving a sanction. MUTHUSWAMI MUDALI *v.* VEENI CHETTI (1907).

I. L. R. 30 Mad. 382

APPEAL TO PRIVY COUNCIL.

See COSTS . **I. L. R. 34 Calc. 860**

1.—*Extension of time—Civil Procedure Code (Act XIV of 1882), s. 602—Appeal by special leave—Time for depositing estimated costs.*—Although s. 602 of the Civil Procedure Code only applies to a case where a certificate of leave to appeal to the Privy Council has been granted by the High Court, it has been the invariable practice of the Calcutta High Court to treat that section as applying to cases where special leave has been granted by the Privy Council. The High Court has power to extend the time as provided by s. 602 of the Civil Procedure Code

APPEAL TO PRIVY COUNCIL— *concluded.*

for depositing the estimated cost of translating, transcribing, indexing and transmitting to the Privy Council the record of a case under appeal, but it ought not to do so without some cogent reason. *Burjore and Bhawani Parshad* v. *Bhagana, I. L. R. 10 Calc. 557*, followed. JOTINDRA NATH CHOWDHURY *v.* PRASANNA KUMAR BANNERJEE BAHADUR (1907) . . **11 C. W. N. 1104**

2.—*Value of subject-matter of suit—Several suits tried together and dealt with on one judgment—Aggregate value—Civil Procedure Code (Act XIV of 1882), s. 596.*—A large number of suits were tried together and dealt with in the judgment both in the first Court and in the High Court, and leave to appeal to the Privy Council was granted in the cases where the amounts in dispute were over R10,000; on application for leave to appeal in the remaining cases: *Held*, that inasmuch as, although if each case were taken separately, the value was below R10,000, yet, if taken collectively, the aggregate reached that amount and the cases were all dependent upon the same judgment, and the case fell within s. 596 of the Code of Civil Procedure, leave to appeal should be granted in each of the cases. *Khajah Ashanulla* v. *Karoonamoyi Chowdhry, 4 C. L. R. 125; Joogulkishore* v. *Jotindro Mohun Tagore, I. L. R. 8 Calc. 210*; and *Byjnath* v. *Graham, I. L. R. 11 Calc. 740*, referred to. DEONARAIN SINGH *v.* GUNI SINGH (1907) . . . . **I. L. R. 34 Calc. 400**

APPEARANCE.

—— default in—

—*Appeal—Adjournment, application for—Dismissal for default—Re-admission—Civil Procedure Code (Act XIV of 1882), ss. 556, 558.*—An application by a counsel or pleader, who is instructed only to apply for an adjournment, which is refused, is not an "appearance" within the meaning of the Code of Civil Procedure. When in such circumstances an appeal is dismissed, the dismissal is one for default under s. 556 of the Code of Civil Procedure, entitling the appellant to apply for re-admission under s. 558 of the Code. *Cooke* v. *The Equitable Coal Company, 8 C. W. N. 621*, approved. *Watson & Co.* v. *Ambika Dasi, 4 C. W. N. 237*, overruled. SATISH CHANDRA MUKERJEE *v.* AHARA PRASHAD MUKERJEE (1907) . . . . **I. L. R. 34 Calc. 403**

APPELLATE COURT.

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—— power of—

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I. L. R. 30 Mad. 48

APPELLATE COURT— *concluded.*

—— power of, on remand—

See REMAND . **I. L. R. 34 Calc. 996**

—— power of, to stay sale—

See EXECUTION OF DECREE.
I. L. R. 34 Calc. 1037

1.—*Appellate Court can itself try the offender—Cognizance in such cases under s. 190 (b) and not 190 (c)—S. 423 (1) (b) of the Code of Criminal Procedure ought to be read with s. 528 of the Code.*—The provisions of s. 423 (1) (*b*) do not preclude an Appellate Court, when it reverses the finding and sentence under appeal, from trying the offender itself, if the offence is one ordinarily triable by it. In such cases, the Appellate Court takes cognizance under s. 190 (*b*) and not s. 190 (*c*). EMPEROR *v.* MANIKKA GRAMANI (1906).
I. L. R. 30 Mad. 228

2. —*Practice—Power to take notice of facts transpiring during pendency of appeal—Discretion.*— As a general rule a Court of Appeal in considering the correctness of the judgment of the Court below will confine itself to the state of the case at the time such judgment was rendered, and will not take notice of any facts which may have arisen subsequently. But the Court will in exceptional cases depart from this rule, specially where by so doing it can shorten litigation and best attain the ends of justice. Plaintiff was given leave to amend his plaint so as to adapt his case and prayers for relief to the new facts, the amendment not altering the nature of the case. RAM RATAN SAHU *v.* BISHUN CHAND (1907).
11 C. W. N. 732

APPLICATION.

—— by Receiver for leave to sell—

See RECEIVER . **I. L. R. 34 Calc. 1034**

APPOINTMENT BY GENERAL BEQUEST.

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APPORTIONMENT.

—— of compensation—

See LAND ACQUISITION ACT (I OF 1894), ss. 18, 20, 21. **I. L. R. 34 Calc. 451**

APPROPRIATION.

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See PARDON . . **I. L. R. 29 All. 24**

ARBITRATION.

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See CIVIL PROCEDURE CODE, s. 503. I. L. R. 29 All. 429

See PRACTICE. . I. L. R. 34 Calc. 443

1. REFERENCE TO ARBITRATION.

1.—*Civil Procedure Code, s. 506—Arbitration—Application for reference signed by pleader holding a defective vakalatnamah.*—An application under s. 506 of the Code of Civil Procedure for a reference to arbitration was made by the parties to a pending suit. This application was signed on behalf of the defendants by some of the defendants personally, and on behalf of the others by a pleader. It appeared, however, that the pleader's vakalatnamah has not been signed by one of the defendants on whose behalf the pleader had signed. *Held*, that in the absence of any circumstance to estop the defendant who had not signed from objecting to the reference, the reference to arbitration and all subsequent proceedings founded thereupon were invalid. *Pitam Mal* v. *Sadiq Ali, I. L. R. 24 All. 229*, distinguished. KADHU SINGH v. BALJIT SINGH (1907) . I. L. R. 29 All. 423

2.—*Arbitration – Authority of pleader to agree to reference.*—A vakalatnamah in general terms is wholly insufficient to enable a pleader to apply for an order of reference to arbitration on behalf of his client under s. 506 of the Code of Civil Procedure. Where, however, a reference was made on such authority and an award followed and a decree based on such award without any objection taken to the authority of the pleader to apply for a reference, the High Court refused to set aside such decree in revision. RAMJIAWAN v. KALI CHARAN SINGH (1907) . . . . I. L. R. 29 All. 429

2. REVOCATION OF ARBITRATION.

—3.—*Specific Relief Act (I of 1877), s. 21—Alleged revocation of submission—For what cause submission may be revoked.*—Although no party to an agreement of reference can revoke the submission to arbitration, unless for good cause, and a mere arbitrary revocation of the authority is not permitted, the fact, if proved, that the arbitrator was in fraudulent collusion with one of the opposite side might be a good ground for revocation of the submission. *Pestonjee Nussurwanjee* v. *Manockjee & Co., 12 Moo I. A. 112; Tahal* v. *Bisheshwar, I. L. R. 8 All. 57*, referred to. BANSIDHAR v. SITAL PRASAD (1906) . . I. L. R. 29 All. 13

3. AWARDS.

4.—*Award, validity of—Civil Procedure Code (Act XIV of 1882), s. 506—Reference to arbitration not concurred in by all the parties—*

ARBITRATION—*concluded.*

Ground for setting aside award.—When a reference to arbitration is made in the course of a suit, and an award made upon it, the award cannot be set aside on the ground that all the parties to the suit did not concur in the reference. *The Chairman of the Purnea Municipality* v. *Siva Sankar Ram, I. L. R. 33 Calc. 899*, followed. LAL MOHAN PAL v. SURYA KUMAR DAS (1906) . 11 C. W. N. 1152

5.—*Civil Procedure Code, ss. 521 and 522—Arbitration—Award—Decree on judgment in accordance with award—Appeal.*—During the pendency of a suit in the Court of a Subordinate Judge the matters in dispute between the parties were referred to arbitration. In due course a document purporting to be the arbitrator's award was received by the Court through the post. Objections were filed by one of the defendants to the suit; but these objections were, after hearing, disallowed by the Court which proceeded to pass a decree in accordance with the award. *Held*, that an appeal would lie from such a decree upon the ground that the so-called award was never delivered by the arbitrator and was in fact and in law no award at all. SHAM LAL v. MISRI KUNWAR (1907). I. L. R. 29 All. 426

6.—*Instrument of partition—Award—An award by an arbitrator directing a partition.*—An award began by saying, "We decide as below. The parties should act accordingly." It went on, the defendant "should take into his possession as below after passing a legal release." It added other directions with regard to the action of the defendant, and provided "in connection with whatever is settled to be given to the 'defendant' and to be taken by him, we direct that the 'defendant' should take into his possession the properties and receive and pay money stated above after passing a release on sufficient stamp and getting it registered." *Held*, that the award came within the meaning of the words "an award by an arbitrator directing a partition" within the meaning of s. 2, clause 15, of the Indian Stamp Act (II of 1899). *Per* BEAMAN, *J.*—The terms of s. 2 clause 15, of the Indian Stamp Act (II of 1899) provide for all the cases, for parties having divided or agreed to divide, for arbitrators, to whom reference has been made, directing a partition and last for the Courts effecting a partition. KALIDAS v. TRIBHUVANDAS (1906) . . . . I. L. R. 31 Bom. 68

ARBITRATION ACT (IX OF 1899).

——s. 19—

1.—*Jurisdiction of High Court to stay proceedings in the Small Cause Court—Step in the proceedings.*—*N* agreed to purchase from *R* 150 tons of sugar imported by *R*. A clause in the agreement provided for arbitration in the event of disputes arising in connection with the agreement. A dispute arose with regard to the condition of some of the bags of sugar, and *N* claimed damages from *R* which *R* refused to pay. *N* filed a suit in the Small Cause Court. The Judge before whom the

ARBITRATION ACT (IX OF 1899)—*concluded.*

suit was instituted on the petition of *R* stayed the proceedings. On appeal to the full Court the order staying the proceedings was set aside. *R* by a petition to the High Court prayed that the proceedings in the Small Cause Court should be stayed. *Held*, under s. 19 of the Arbitration Act, the High Court has the power to stay proceedings in the Small Cause Court and the proceedings should under the circumstances be stayed. *Per* CURIAM:—The language of s. 19 of the Act is quite clear and it gives jurisdiction to the High Court to stay proceedings in any Court in the Presidency town subordinate to its jurisdiction. The section in the beginning refers to a party to a submission commencing *any legal proceedings*; then it goes on to refer to *such* legal proceedings, and then provides for staying *the* proceedings. Nowhere is there any indication in the section or the Act that the legal proceedings contemplated must be proceedings in that Court. Any proceedings taken by a party to a suit to stay legal proceedings under s. 19 of the Arbitration Act are not 'steps in the proceedings.' RALLI *v.* NOOR MAHOMED (1906) . . . . **I. L. R. 31 Bom. 236**

2.—*Application for extension of time—Stay of proceedings—Step in proceedings.*—The Calcutta Corporation applied for further time to file their written statement and obtained a fortnight's time. Subsequently they applied to the Court for a reference to arbitration and stay of proceedings. The plaintiffs objected on the ground that an application for further time amounted to a step in the action within s. 19 of the Indian Arbitration Act:—*Held*, that such an application was a step in the proceedings within s. 19 of the Arbitration Act and that the application for reference to arbitration could not be maintained. *Ford's Hotel Company, Limited* v. *Bartlett*, [*1896*] *A. C. 1*, followed. SARAT KUMAR ROY *v.* CORPORATION OF CALCUTTA (1907) . . . . **I. L. R. 34 Calc. 443**

ARMS ACT (IX OF 1878).

——s. 4—

—*Sword stick—"Arms," meaning of—License, necessity of.*—A sword-stick is a "sword" within the meaning of the term in s. 4 of the Indian Arms Act. Neither the length, breadth or the form of the blade of a weapon, nor the handle, afford any certain test of its classification as "arms." Whatever can be used as an instrument of attack or defence, for cutting as well as for thrusting, and is not an ordinary implement for domestic purposes, falls within the purview of the Act. EMPEROR *v.* SATISH CHANDRA ROY (1907). **I. L. R. 34 Calc. 749**

ASSIGNMENT.

See LIMITATION. **I. L. R. 34 Calc. 612**

ASSIGNMENT OF DEBT.

—*Transfer of Property Act (IV of 1882), s.130—Direction to pay, endorsed on instrument amounts to assignment.*—A direction in writing to pay the amount due on an instrument, endorsed on

ASSIGNMENT OF DEBT—*concluded.*

such instrument by the payee thereof, coupled with the delivery of the instrument so endorsed to the person to whom payment is directed is an assignment of such document within the meaning of s. 130 of the Transfer of Property Act. *Brandts, Sons & Co.* v. *Dunlop Rubber Company, Limited*, [*1904*] *1 K. B. 387*, distinguished. RAMA IYEN *v.* VENKATACH ELLAM PATTER (1906) **I. L. R. 30 Mad. 75**

ATTACHING CREDITOR.

See REPRESENTATIVE . **11 C. W. N. 433**

ATTACHMENT.

See HINDU LAW—DEBT—EXECUTION OF DECREE. . **11 C. W. N. 163**

See MARRIED WOMAN, PROPERTY OF. **I. L. R. 30 Mad. 378**

See TRANSFER OF PROPERTY ACT. **I. L. R. 31 Bom. 244**

See VALUATION OF SUIT. **I. L. R. 30 Mad. 335**

See WARRANT OF ATTACHMENT.

——before judgment—

—*Limitation Act (XV of 1877), Sch. II, Art. 29—Suit for compensation—Limitation—Terminus a quo.*—*Held*, that the limitation applicable to a suit for damages on account of the alleged unlawful attachment before judgment of a shop belonging to the plaintiff was that prescribed by Art. 29 of the Indian Limitation Act, 1877, and that limitation began to run from the date of the attachment. *Murugesa Mudaliar* v. *Jattaram Davy, I. L. R. 23 Mad. 621, Multan Chand Kanyalal* v. *Bank of Madras, I. L. R. 27 Mad. 346*, and RAM *Singh Mohapattur* v. *Bhottro Manjee Sonthal, 24 W. R. 298*, followed. *Surajmal* v. *Manekchand 6 Bom. Law Reporter 704*, distinguished. *Semble* that such an attachment, if wrongful, is not a continuing wrong within the meaning of s. 23 of the Indian Limitation Act, 1877. RAM NARAIN *v.* UMRAO SINGH (1907) . **I. L. R. 29 All. 615**

——of decree—

—*Civil Procedure Code (Act XIV of 1882), s. 316—Attachment of decree, after sale but before confirmation—Right of attaching creditor to have sale confirmed.*—When a person who had obtained a decree purchased immoveable property at an auction-sale held in execution of the same, but before the sale was confirmed and satisfaction of the decree entered in the record, the decree was attached by a judgment-creditor of the decree-holder. *Held*, that the effect of the attachment was to place the attaching creditor in the position of the decree-holder so as to entitle him to have the sale confirmed under s. 316, Civil Procedure Code, and to take out a certificate of sale. BOHARIA RUDRANI KOER *v.* RAM PERTAP MULL (1906). **11 C. W. N. 158**

ATTACHMENT—*concluded.*

——effect of——

1.—*Attaching creditor has no cause of action for wrongful removal of attached property —Such creditor's remedy, if any, lies in execution and not by separate suit—S. 91 (f) of Transfer of Property Act not applicable to attaching creditors.* An execution creditor does not by attachment, acquire such an interest in the attached property as will enable him to maintain an action for its wrongful removal. The rights of attaching creditors are regulated by the Code of Civil Procedure and the provisions of s. 91 (*f*) of the Transfer of Property Act do not apply to them. The remedy, if any, of the attaching creditor is by proceedings in execution and not by separate suit. *Godu Ram* v. *Suraj Mal, I. L. R. 27 All. 378*, doubted. KARUPPAN CHETTI *v.* KANDASAMI THEVAN (1906).
I. L. R. 30 Mad. 207

2.—*Creates legal rights though it creates no charge having priority over other creditors —Action maintainable for wilful infraction of such right, without justification.*—An attaching creditor does not acquire any charge on the attached property which would give him priority over other creditors claiming ratable distribution or over the general body of creditors proving in an insolvency of the judgment-debtor. He however acquires a right to have the property kept in *custodia legis* for the satisfaction of his debt. An intentional interference, without sufficient justification, with such right is an actionable wrong for which an action will lie. *Suraj Bunse Koer* v. *Sheo Persad Singh, I. L. R. 5 Calc. 148, at p. 174*, referred to. *Krishna Rau* v. *Lakshmana Shanbhogue, I. L. R. 4 Mad. 302*, referred to. *Frederick Peacock* v. *Madon Gopal, I. L. R. 29 Calc. 428*, distinguished. *Krishnasawmy Mudaliar* v. *Official Assignee of Madras, I. L. R. 26 Mad. 673*, distinguished. *Quin* v. *Leatham, [1901] A. C. 495*, referred to. Where property attached in execution is removed by one who is not a party to the suit, the decree-holder must enforce his claim by a separate suit and not in execution. *Mirza Mahomed Aga Ali Khan* v. *The Widow of Balmakund, L. R. 8 I. A. 241*, distinguished. SANKARALINGA REDDI *v.* KANDASAMI TEVAN (1907).
I. L. R. 30 Mad. 413

——warrant of——

See UNITED PROVINCES LAND REVENUE ACT (LOCAL) III OF 1901, ss. 147, 227, 228 . . I. L. R. 29 All. 272

AUCTION SALE.

See VENDOR AND PURCHASER.
I. L. R. 31 Bom. 566

AWARD.

See APPEAL—ARBITRATION.

See ARBITRATION.

AWARD—*concluded.*

See APPEAL. I. L. R. 29 All. 457, 584

See COMPENSATION
I. L. R. 34 Calc. 470

See PRIVATE AWARD.

See STAMP ACT. . I. L. R. 31 Bom. 68

——validity of—

See ARBITRATION. . 11 C. W. N. 1152

B

BABEE.

See MAHOMEDAN LAW—ENDOWMENT.
I. L. R. 34 Calc. 118

"BABUANA" GRANT.

See CONFISCATION. . 11 C. W. N. 655

BAIL.

—*Criminal Procedure Code (Act V of 1898), s. 107.*—No bail should be called for from a person against whom proceedings under s. 107, Criminal Procedure Code, are contemplated but not actually initiated. The most that can be required of him is to furnish recognizance and that only when there is any likelihood of his absenting himself from Court. MEWA LAL THAKUR *v.* EMPEROR (1906) . . . . . 11 C. W. N. 415

BANK OF BOMBAY.

See PRESIDENCY BANKS ACT.
I. L. R. 31 Bom. 319

BARRISTER.

See ADVOCATE.

BENAMIDAR.

See CONTRACT ACT (IX OF 1872), s. 69.
I. L. R. 34 Calc. 92

See NEGOTIABLE INSTRUMENTS ACT (XXVI of 1881), ss. 8, 78.
I. L. R. 30 Mad. 88

—*Benamidar, right of, to bring suit—Can sue only if he can show some right under general law—Benamidar, merely as such, not a Trustee—Limitation Act (XV of 1877), Sch. II, Art. 149 applies only to suits brought by or on behalf of the Secretary of State.*—A person in whose name property is purchased *benami* cannot sue in his own name unless he can show some right under the general law to maintain the suit as for instance, as trustee or agent of an undisclosed principal. In *benami* sales, the legal estate does not in all cases

BENAMIDAR—*concluded.*

rest in the benamidar, and constitute him a trustee for the real owner. Art. 149 of Sch. II of the Limitation Act applies only to suits brought by the Secretary of State or on his behalf and not to suits brought by persons deriving title from him. KUTHAPERUMAL RAJALI *v.* THE SECRETARY OF STATE FOR INDIA (1906) **I. L. R. 30 Mad. 245**

BENAMI TRANSACTION.

See BENAMIDAR.

1.—*Benami, plea of.*—Where the plaintiff in a suit for rent claimed as the purchaser from the *pro forma* defendant who admitted the genuineness of the sale but the tenant defendant disputed the *bona fides* of the sale. *Held*, that it was not open to the Court to find that the sale was *benami*. AMRITA LAL MUKHERJEA *v.* GIRIDHAR GHOSE (1907) . . . . **11 C. W. N. 581**

2.—*Limitation Act (XV of 1877), Sch. II, Arts. 62, 120—Art. 62 applies to suits against benamidar by real owner to recover money received by the former.*—The period of limitation for an action by the real owner against a benamidar to recover money received by the latter for the use of the former is that prescribed in Sch. II, Art. 62 of the Limitation Act. Art. 120 does not apply to such a case. *Mahabala Bhatta* v. *Kunhunna Bhatta, I. L. R. 21 Mad. 373*, followed. SUBBANNA BHATTA *v.* KUNHANNA BANTA (1907) . . . **I. L. R. 30 Mad. 298**

3.—*Benami sale—Purchaser from benamidar—Attachment in execution of a money decree against the original owner—Raising of the attachment at the instance of the purchaser from benamidar—Suit by the purchaser to recover possession—Original owner setting up his own fraud.*—*H*, the owner of certain property, executed a *benami* sale-deed and the benamidar sold the property to the plaintiffs' father. The property was afterwards attached in execution of a money decree against *H*, but the attachment was raised at the instance of the plaintiffs' father. Subsequently the plaintiffs brought a suit for the recovery of possession from *H*. *H* pleaded his own fraud as an effective answer to the claim. *Held*, allowing the plaintiffs' claim, that the defendant *H* could not set up his fraud to a claim of immoveable property conveyed by him to the *benamidar*. SIDLINGAPPA *v.* HIRASA (1907) . . **I. L. R. 31 Bom. 405**

BENARES FAMILY DOMAINS ACT (XIV OF 1881).

See EXECUTION OF DECREE.
I. L. R. 34 Calc. 576

BENARES FAMILY DOMAINS REGULATION (VII OF 1828).

See EXECUTION OF DECREE.
I. L. R. 34 Calc. 576

BENGAL ACT.

——1859—XI.

See SALE FOR ARREARS OF REVENUE.

——1867—II.

See GAMBLING ACT.

——1868—VII.

See SALE FOR ARREARS OF REVENUE.

——1870—VI.

See VILLAGE CHAUKIDARI ACT.

——1876—VI.

See CHOTA NAGPUR ENCUMBERED ESTATES ACT.

——1876—VII.

See LAND REGISTRATION ACT.

——1879—I.

See CHOTA NAGPUR LANDLORD AND TENANT PROCEDURE ACT.

——1879—IX.

See COURT OF WARDS ACT.

——1880—VII.

See PUBLIC DEMANDS RECOVERY ACT.

——1880—IX.

See CESS ACT.

——1890—VI.

See BENGAL DRAINAGE ACT.

——1893—III.

See BENGAL TENANCY AMENDMENT ACT.

——1899—III.

See CALCUTTA MUNICIPAL ACT.

BENGAL AND ASSAM LAWS ACT (VII OF 1905).

——ss. 2, 3, 6—

See JURISDICTION.
I. L. R. 34 Calc. 636

——s. 6—

See JURISDICTION.
I. L. R. 34 Calc. 853

BENGAL DRAINAGE ACT (VI B. C. OF 1890).

——ss. 42, 44—

—*Landlord and tenant—Drainage charges, recovery of, by landlord Limitation—Bengal Tenancy Act (VIII of 1885), Sch. III, cl. (2) s. 3, cl. (5)—"Rent"—Waiver of statute by contract—Validity—Limitation, running of, from date other than that on which amount pay-*

BENGAL DRAINAGE ACT (IV B. C. OF 1890)—*concluded.*

able.—A suit to recover drainage charges payable by a tenant to his landlord under s. 42, cl. (*b*) and s. 44, sub-s. (*1*) of the Bengal Drainage Act is governed by cl. (*2*) of Sch. III of the Bengal Tenancy Act and must be brought within 3 years from the last day of the Bengali year in which the sum claimed fell due. Drainage charges payable by the tenant to the landlord as above are included within the definition of "rent" in s. 3, sub-s. (*5*) of the Bengal Tenancy Act. *Monmohini* v. *Preo Nath, 8 C. W. N. 640*, explained and followed. Although a sum of money may be payable on a specified date, the limitation for the recovery thereof need not necessarily run from that date. It is lawful for parties to substitute for their statutory obligation under the Drainage Act a contractual obligation. *Held*, in the present case, that the contract merely amounted to a covenant by the tenant to pay drainage charges in accordance with the statute and did not modify or supersede its provisions. *Jyoti Kumar* v. *Haridas, I. L. R. 32 Calc. 1019*, approved. *Mackenzie* v. *Haji, I. L. R. 19 Calc. 1.* referred to. NAFFER CHUNDRA MAJIE *v.* JYOTI KUMAR MUKERJEE (1906).

11 C. W. N. 57

BENGAL MUNICIPAL ACT (III OF 1884).

——ss. 34, 37—

—Lease—Contract in violation of the Bengal Municipal Act—Commissioners, power of, under the Bengal Municipal Act (III of 1894 B. C.), ss. 34, 37—Ultra vires.—S. 34 of the Bengal Municipal Act must be read along with s. 37 of the said Act. Where in a suit by the Chairman of the Municipality to set aside a permanent lease executed by the defendant it was found that the contract was sanctioned by the Commissioners at a meeting and that it involved a value exceeding Rs00, but that the *kabuliyat* executed on behalf of the Municipality was signed only by the Chairman, and although two of the Commissioners witnessed it they did not sign it as contracting parties, and, furthermore, it was not sealed with the seal of the Commissioners. *Held*, that the contract was not binding on the Commissioners. CHAIRMAN, SOUTH BARRACKPUR MUNICIPALITY *v.* AMULYA NATH CHATTERJEE (1907).

I. L. R. 34 Calc. 1030

BENGAL AND NORTH-WESTERN PROVINCES CIVIL COURTS ACT (XII OF 1887) . I. L. R. 34 Calc. 636

——s. 21—

See VALUATION OF SUIT.

I. L. R. 34 Calc. 954

BENGAL REGULATION V OF 1799 (BENGAL WILLS AND INTESTACY REGULATION).

—— s. 7.

—Escheat—Property taken possession of by District Judge—Period from which title vests in the Secretary of State.—Where property of a person dying intestate is taken charge of by a District Judge acting under s. 7 of Regulation No. V of 1799, such property does not vest in the Secretary of State until the period prescribed by the Regulation has expired. RAM NARAIN DUBE *v.* THE SECRETARY OF STATE FOR INDIA (1907).

I. L. R. 29 All. 277

BENGAL REGULATION (XVII OF 1806).

— s. 8—

—Mortgage by conditional sale—Foreclosure—Parwanah—"Official signature"—Procedure.—Held, that a *parwanah* or notification to the mortgagor, issued in a suit for foreclosure of a mortgage by conditional sale under the provisions of s. 8 of Regulation XVII of 1806, which bore the seal of the Court and the initials of the Judge of the Court from which it issued, was a good and sufficient notification within the meaning of the Regulation. *Madhopersad* v. *Gajudhar, I. L. R. 11 Calc. 111*, distinguished. *Kubra Bibi* v. *Wajib Khan, I. L. R. 16 All. 59, quoad hoc*, overruled. BHAGWAT KUBI *v.* BALDEO RAI (1906) . . . . I. L. R. 29 All. 145

BENGAL TENANCY ACT (VIII OF 1885).

See LANDLORD AND TENANT.

——ss. 5 (2), 79, 82, 160 (*e*)—

See NON-OCCUPANCY RAIYAT.

I. L. R. 34 C alc. 516

——ss. 17, 88, 161—

See LANDLORD AND TENANT.

11 C. W. N.217

——ss. 22, 49, 85 (l)—

See LANDLORD AND TENANT.

I. L. R. 34 Calc. 104

——s. 23—

See LANDLORD AND TENANT.

I. L. R. 34 Calc. 718

——s. 29 (*b*), prov. (ii), (iii).

—Occupancy holding—Rent, enhancement of, over 2 annas in the rupee—Relieving tenant, from other liabilities—Improvements not mentioned in kabuliat, proof of—Evidence Act (I of 1872), s. 91.—Where an occupancy raiyat executed a *kabuliyat* in favour of the landlord stipulating to pay rent at an enhanced rate of more than two annas in the rupee and the *kabuliyat* did not

BENGAL TENANCY ACT (VIII OF 1885)—*continued.*

refer to any improvements of the kind mentioned in proviso (*ii*) of s. 29 of the Bengal Tenancy Act: *Held*, that s. 91 of the Evidence Act did not preclude the landlord from proving improvements in consideration of which the enhanced rate was agreed upon. The consideration did not constitute a term of the contract within that section. The fact that the tenant has been exonerated from certain liabilities under a previous contract cannot give validity to a stipulation to pay rent at an enhanced rate exceeding 2 annas in the rupee. *Ratio decidendi of Sheo Sahoy Panday* v. *Ram Rachia Roy*, *I. L. R. 18 Calc. 333*, and *Nath Singh* v. *Damri Singh*, *I. L. R. 28 Calc. 90*, indicated. PROBOD CHANDRA GANGOPADHYA *v.* CHERAG ALI (1906).
11 C. W. N. 62

——ss. 30, 52—

—Joinder of causes of action.—There is nothing in the law which prevents one suit being brought for enhancement under s. 30 and for increase of rent under s. 52 of the Bengal Tenancy Act. The two causes of action may be joined in one suit. SARADA CHARAN CHATTERJEE *v.* ISWAR SAMLI (1907) . . . . . **11 C. W. N. 1154**

——s. 49—

See EJECTMENT, SUIT FOR.
I. L. R. 34 Calc. 396

See UNDER-RAIYAT . **11 C. W. N. 519**

——ss. 54, 61, 67—

See INTEREST . **11 C. W. N. 983**; **I. L. R. 35 Calc. 34**

——ss. 55, 107, 109, 109A, 192—

—Payment of rent—Appropriation must be specific—Temporary Revenue Settlement—Settlement of rent if can be made except upon application by landlord or tenant—Settlement affirmed by Special Judge—Finality—Res judicata.—The provisions of s. 55 of the Bengal Tenancy Act are very different from those of s. 59 of the Contract Act. Under s. 59 of the Contract Act, the Court may have regard not only to the debtor's express intimation but also to circumstances implying that the payment is to be applied to the discharge of some particular debt. Under s. 55 of the Bengal Tenancy Act, the debtor must declare the year, or the year and the instalment to which he wishes the payment to be credited. If he does not do so, the payment may be credited to the account of such year and instalment as the landlord thinks fit. Where by an arrangement between the landlord and the tenant the latter paid a certain sum annually to Government on behalf of the former: *Held*, that there was no appropriation of the amount so paid each year to the rent of that year within s. 55, Bengal Tenancy Act. MOHIM CHANDRA ROY *v.* KALITARA DEBYA (1906).
11 C. W. N. 939

BENGAL TENANCY ACT (VIII OF 1885)—*continued.*

——s. 61—

See LEGAL TENDER.
I. L. R. 34 Calc. 305

—— s. 67—

See INTEREST. . **11 C. W. N. 215**

—Interest—Rent.—The word "rent" does no necessarily include interest; so if any sum of money be paid by a tenant to a landlord as rent, and the latter receives it as such, he cannot be permitted to apply that money towards any interest which might then be due. *Raicharan Ghose* v. *Kumud Mohun Dutta Chowdhury*, *I. L. R. 25 Calc. 571*; *Kaylash Chandra De* v. *Tarack Nath Mandal*, *I. L. R. 25 Calc. 575*, referred to. BHAGABATI DEBYA CHOWDHURANI *v.* BASANTA KUMARI DEBI (1906) . . **11 C. W. N. 110**

——s. 85, cl. (2)—

—Sub-lease—Term exceeding nine years—Validity—Suit for ejectment by raiyat—Notice.—Cl. (2) of s. 85 of the Bengal Tenancy Act has not been enacted merely for the protection of the superior landlord. A sub-lease by a raiyat for a term exceeding nine years is invalid even against the raiyat. *Gopal Mondal* v. *Eshan Chandra Banerjee*, *I. L. R. 29 Calc. 148*, and *Madan Chandra Kapali* v. *Jaki Karikar*, *6 C. W. N. 377*, distinguished. BASARATULLA MUNDLE *v.* KASIRUNNESSA BIBI (1906) . **11 C. W. N. 190**

——ss. 93, 94—

See COMMON MANAGER.
11 C. W. N 1143

——s. 103—

—Record-of-rights—Khewat—Primâ facie evidence.—If there is no settlement of rent under Chap. X of the Bengal Tenancy Act, the entry in the record-of-rights, if it was duly published, would be only *primâ facie* evidence in favour of the landlord—evidence which may be rebutted by the tenant. ABDUL RASHEED *v.* JOGESH CHANDRA ROY (1906) . . . **11 C. W. N. 153**

——ss. 103A, 111A—

See RECORD-OF-RIGHTS, OBJECTION TO.
11 C. W. N. 48

——ss. 104 (2), 107—

—Where a settlement of rent was made under s. 104 (2) of the Bengal Tenancy Act before its amendment by the Amendment Act of 1898, the decision of the Settlement Officer had the effect of a decree under s. 107 of the Act (before amendment), and is evidence in a suit for rent subsequently brought by the landlord even though

BENGAL TENANCY ACT (VIII OF 1885)—*continued.*

it may not operate as *res judicata*. MOHIM CHANDRA ROY *v.* KALI TARA DEBYA (1907). 11 C. W. N. 1028

——ss. 107, 109, 109A, 192—

See RES JUDICATA . 11 C. W. N. 939

——s. 149, cl. (3)—

—Suit for rent in deposit—Onus—Title—Res judicata.—Where a suit was brought under the provisions of s. 149, cl. (3) of the Bengal Tenancy Act and the plaintiff made out a very strong case in support of his title to the rents in deposit: *Held*, that the onus was then shifted on the defendant and that plaintiff was entitled to succeed although he was not in a position to prove realisation of rents from the tenant, the plaintiff's case being that the defendant had been preventing her from realising them. Although the matter relating to the title of the plaintiff was not *res judicata* against the defendant, still the matter having been in issue in a suit in which the defendant was a party and that suit having been decided in favour of the plaintiff, and in accordance with the decree passed in that suit a conveyance having been executed in favour of the plaintiff's predecessor-in-title. *Held*, that this constituted a strong case in favour of the plaintiff's title and possession which it lay heavily on the defendants to displace. TRAILOKYA MOHINI DASI *v.* KALI PROSANNA GHOSE (1907). 11 C. W. N. 380

——s. 167——

See LANDLORD AND TENANT.
I. L. R. 34 Calc. 298

—Sale in execution—Encumbrances, annulment of.—Per GEIDT, *J.* (before the reference).—S. 167, Bengal Tenancy Act, does not apply to a sale in execution of a rent decree of a portion only of a tenure or holding, and the auction-purchaser cannot proceed under that section to annul encumbrances. RAMKINKER BISWAS *v.* AKHIL CHANDRA CHOWDHURY (1907) . . . 11 C. W. N. 350

——s. 169—

See SALE FOR ARREARS OF RENT.
I. L. R. 34 Calc. 724

——s. 169, cl. (c)—

See INTEREST ON RENT.
11 C. W. N. 1106

——s. 174—

—Setting aside of sale—Deposit—this calculation by an officer of the Court.—where upon setting aside a sale under s. 174 of the Bengal Tenancy Act it was found that the amount of deposit fell short of the amount required to be deposited under the law, but that this was owing to a mistake in calculation by the officer of the Court who ordinarily supplied such information, and it appeared that the Chief Ministerial Office of the Court had also signed his aproval of the information by signing the *challan*: *Held*, that this was a

BENGAL TENANCY ACT (VIII OF 1885)—*concluded.*

case in which the High Court ought not to interfere. *Chandi Charan Mandal* v. *Banke Behary Lal, I. L. R. 26 Calc. 449*, distinguished. *Ugra Lall* v. *Radha Persad Singh, I. L. R. 18 Calc. 255*, referred to. *Abdool Latif Moonshi* v. *Jadub Chandra Mitter, I. L. R. 25 Calc. 216*, followed. SHEIKH FAKIR *v.* BERAJ MOHINI DASI (1906). 11 C. W. N. 116

——Sch. III, Cl. (2)—

See DRAINAGE CHARGES, RECOVERY OF.
11 C. W. N. 57

——Sch. III, Art. 2 (b)—

—Suit for rent by a co-sharer landlord against some of several joint tenants—Limitation—Maintainability.—Art. 2 (*b*) of Sch. III of the Bengal Tenancy Act applies to a suit for rent by a co-sharer landlord. A suit for rent against some of several joint tenants is maintainable as joint tenants are jointly and severally liable. JOGENDRA NATH ROY *v.* NAGENDRA NARAIN NANDI (1907). 11 C. W. N. 1026

BENGAL TENANCY AMENDMENT ACT (III B. C. of 1898).

——s. 9—

—Decision of Settlement Officer that land not held rent-free—Res judicata—Decision under Ch. X of the Bengal Tenancy Act (VIII of 1885) before amendment.—In a proceeding under Ch. X of the Bengal Tenancy Act before the passing of Act III B. C. of 1898, the Settlement authorities found that lands claimed by the tenants as their rent-free lands were not rent-free and they accordingly assessed the same with rents. *Held*, that by the operation of s. 9 of Act III B. C. of 1898, the Civil Court is precluded from adjudicating on the same matter. NABIN CHANDRA CHAKRABARTI *v.* RADHA KISHORE MANIKYA BAHADUR (1907) . . 11 C. W. N. 859

BEQUEST.

See HINDU LAW—WILL.

——validity of—

See HINDU LAW.
I. L. R. 34 Calc. 828

BHAGDARI AND NARWADARI ACT (BOM. V OF 1862).

——s. 3—

—Land Revenue Code (Bom. Act V of 1879), s. 83—Fruit-yielding trees standing on a portion of a Bhag—Permanent tenancy—Annual tenancy—Construction—Obstruction to tenant in the enjoyment of trees—Permanent injunction.—The plaintiff, who claimed to be a purchaser from a permanent occupant of certain land which formed portion of a Bhag, sued for a permanent

BHAGDARI AND NARWADARI ACT (BOM. V OF 1862)—*concluded.*

injunction restraining the defendant from obstructing him from the enjoyment of certain fruit-yielding trees and preventing him from entering on the land in which the trees were situated and taking the produce of the trees and having the same watched every year. The defendant denied the plaintiff's right as permanent occupant and the legality of his purchase, and relied on the provisions of the Bhagdari and Narwadari Act (Bom. Act V of 1862). The first Court held that the plaintiff was a permanent tenant and that his purchase was valid. On appeal by the defendant, the Judge held that a permanent lease was inconsistent with the provisions of the Bhagdari and Narwadari Act (Bom. Act V of 1862), and (even though proved) could not be recognized, having regard solely to s. 83 of the Land Revenue Code (Bom. Act V of 1879). He therefore found that the plaintiff was a tenant from year to year and modified the decree of the first Court by directing that the injunction should continue until the determination of the tenancy from year to year. On second appeal by the plaintiff, *Held*, reversing the decree of the Judge and restoring that of the first Court, that on a consideration of the circumstances of the case, and the revenue register, and having regard to s. 83 of the Land Revenue Code (Bom. Act V of 1879), the plaintiff was a permanent tenant. *Held*, further, that there was nothing in the Bhagdari and Narwadari Act (Bom. Act V of 1862) to prevent a permanent tenant of a Bhagdar from alienating the fruit of the trees growing on the land of which he is a tenant. *Per* BEAMAN, *J.* :—S. 3 of the Bhagdari and Narwadari Act (Bom. Act V of 1862) does not prohibit a permanent tenant from disposing of trees on his land. S. 83 of the Land Revenue Code (Bom. Act V of 1879) creates no new rights, it simply insists on the Courts adopting a better method of ascertaining whether in fact the right existed. NAHANCHAND *v.* MODI KEKHUSHRU (1906).

I. L. R. 31 Bom. 183

BIGAMY.

—*Penal Code (Act XLV of 1860), s. 494—Native Christian having Christian wife living, and marrying Hindu woman, guilty of bigamy under the section.*—A Native Christian, who, having a Christian wife living, marries a Hindu woman according to Hindu rites without renouncing his religion, is guilty of an offence under s. 494, Indian Penal Code. *In re Millard, I. L. R. 10 Mad. 218*, followed in principle. *In re Ram Kumari, I. L. R. 18 Calc. 264*, followed in principle. *Proceedings, dated 8th November 1866, 3 M. H. C. R. App. VII*, not followed. *Obiter*: It will make no difference even if he had renounced the Christian religion before contracting the second marriage. EMPEROR *v.* LAZAR (1907).

I. L. R. 30 Mad. 550

BILL OF LADING.

See CONTRACT . **I. L. R. 34 Calc. 173**

BILL OF LADING—*concluded.*

See NEGLIGENCE.

I. L. R. 30 Mad. 79

BIRT ZAMINDARS.

—*Oudh Estates Act, 1869—Birt zamindars—Rights of persons holding under-proprietary rights in villages under taluqdars before annexation of Oudh—Policy of Government under Record of Rights—Circular No. 2 of 1861—Heritable and transferable rights.*—The defendants, either by themselves or their predecessors in title, had from before the annexation of Oudh held under proprietary rights (known as birt or birt zamindari rights) in villages in the taluqa of which the plaintiff was the taluqdar. In the Record of Rights Circular No. 2 of 1861, the policy of the Government was declared "that the Birtias who were found in direct engagement with the State at annexation, or who have uninterruptedly held whole villages on the terms of their pattahs under the taluqdars must be maintained in the full enjoyment of their rights in subordination to the taluqdars." In suit by the taluqdar to recover the villages : *Held*, on the evidence and under the circumstances of the case, that the defendants had shown themselves to come within the benefit of the policy declared in the above circular, and had therefore acquired, upon the annexation of Oudh by the British Government, heritable and transferable rights as against the plaintiff in the villages in suit. MUHAMMAD MUMTAZ ALI KHAN *v.* MURAD BAKHSH (1907) **I. L. R. 29 All. 708: L. R. 34 I. A. 142**

BIRTH, PROOF OF.

—*Minority—Plaintiff having three years to sue after attaining majority—Act No. XV of 1877 (Indian Limitation Act), s. 7—Nature of evidence required to prove date of birth.*—Although in India it is difficult to prove such a fact as the date of birth after a lapse of many years, and it would be unreasonable to require such a class of evidence as would be justly demanded in a similar case in England, the evidence must yet be such as to carry reasonable conviction to the mind. In this case on the proof of the date of the plaintiff's birth depended the question of whether or not the suit was brought within three years of her attaining majority, and it was held that the evidence was insufficient to prove the true date of her birth, and that therefore the suit was barred by limitation. ABA BEGAM *v.* NANHI BEGAM (1906).

I. L. R. 29 All. 29 : L. R. 34 I. A. 1

BOARD OF REVENUE, RULES OF.

—*Land Registration Act (Beng. VII of 1876), s. 88—Evidence—Admissibility—Deposition before Land Registration Deputy Collector not taken in accordance with the provisions of Civil Procedure Code.*—Rules passed in the course of a proceeding of the Board of Revenue and not drawn up by the Board under s. 88 of the Land Registration Act (Beng. VII of 1876) have not

BOARD OF REVENUE, RULES OF— *concluded.*

the force of law. Where the Deputy Collector in a proceeding under the Land Registration Act (Beng. VII of 1876) recorded the deposition of a witness, which was not read over and interpreted to the witness: *Held*, that the deposition was not inadmissible in evidence as the rule of the Board of Revenue which directed that "the depositions of witnesses are to be taken as directed in the Code of Civil Procedure, by the presiding officer and not by the *amla* of the Court" was passed in the course of the Board's proceeding and not drawn up by the Board under s. 88 of the Land Registration Act, and therefore has not the force of LAW. DEBI SARAN MISSER *v.* EMPEROR (1907) . **11 C. W. N. 470**

BOMBAY ACT.

——1862—V.

See BHAGDARI AND NARWADARI ACT.

——1876—III.

See MAMLATDARS' COURTS ACT.

——1879—V.

See LAND REVENUE CODE.

——1880—I.

See KHOTI SETTLEMENT ACT.

——1887—IV.

See BOMBAY PREVENTION OF GAMBLING ACT.

——1888—III.

See BOMBAY MUNICIPAL ACT.

——1902—IV.

See BOMBAY CITY POLICE ACT.

——1906—II.

See MAMLATDARS' COURTS ACT.

BOMBAY CITY POLICE ACT (BOM. IV OF 1902).

——ss. 12, 16, 18—

—Commissioner of Police—Orders issued by the Commissioner forbidding meetings by the members of the police force to discuss matters concerned with the force—Orders relating to discipline and general government of the force—Construction of statutes.—The Commissioner of Police in Bombay, under the powers vested in him by s. 12 of the Bombay City Police Act (Bombay Act IV of 1902), issued the following notification—"The Commissioner of Police under the provisions of s. 12 of Bombay Act IV of 1902 hereby prohibits any member of the police force from calling or attending a meeting to discuss any subject connected with the police force, without his permission." This notification was read over to the members of the police force at a muster parade at which the accused was present. Notwithstanding this, the accused attended a meeting of the members of the police force convened to discuss subjects connected with the force. For this disobedience, the accused was proceeded against under s. 18 of the Bombay City Police Act (Bombay Act IV of 1902). *Held*, that the Commissioner of Police was authorized to issue the notification under s. 12 of the Act, for the object of the notification was not to deprive the policemen of their private right but to regulate their conduct in their police capacity; that, therefore, the accused in disobeying the order had committed an offence punishable under s. 18 of the Act. The order which the Commissioner of Police is competent to issue under the head of discipline and general government, under s. 12 of the Bombay City Police Act (Bombay Act IV of 1902), must be one having reference to the conduct of the police officers in their capacity as such officers. Over their conduct in other relations of life, his disciplinary power does not extend, so long as no element or question of their police duty enters into those relations. If it does enter, the controlling authority of the Commissioner comes into play and it becomes a matter of police discipline. The meaning of s. 16 of the Act is that even when a police officer is not actually at his post discharging the duty assigned to him, he is for the purposes of the Act to be regarded as being at that post, with all the rights and obligations of his office attaching to him. In construing an expression of doubtful import occurring in a statute, the Court may well have regard to considerations outside the language of the Act. EMPEROR *v.* ATMARAM (1907) . . **I. L. R. 31 Bom. 480**

BOMBAY CITY POLICE ACT (BOM. IV OF 1902)—*concluded.*

BOMBAY LAND REVENUE CODE (ACT V OF 1879).

——s. 37—

See LAND REVENUE CODE.
I. L. R. 31 Bom. 456

BOMBAY MUNICIPAL ACT (BOM. III OF 1888).

——s. 33—

—Election of Councillor, validity of—Applicant's right to question election—"Election," meaning of—Chief Judge of Small Cause Court has sole jurisdiction to try suits relating to election petitions—Jurisdiction of High Court—Civil Procedure Code (Act XIV of 1882), s. 11.—Under s. 33 of the City of Bombay Municipal Act, 1888, an applicant can question the election of every candidate on the ground that the election as a whole was invalid, for the section, after specifying two permissible grounds of objection, provides that the validity of any election may be questioned for any other cause, and these words are wide enough to cover the ground of objection urged in this case. It

BOMBAY MUNICIPAL ACT (BOM. III OF 1888)—*concluded.*

is clear that the word "election" in the section is designed to express something wider than a legally valid election, and the words used are consistent with the view that an election which in fact took place under conditions that made it possible that there should be a valid election can be questioned. Under s. 33 the Chief Judge of the Small Cause Court has jurisdiction to determine the validity of a contested election. The High Court has no jurisdiction to entertain such a suit. Where a special tribunal, out of the ordinary course, is appointed by an Act to determine questions as to rights which are the creation of that Act, then, except so far as otherwise expressly provided or necessarily implied, that tribunal's jurisdiction to determine those questions is exclusive. It is an essential condition of those rights that they should be determined in the manner prescribed by the Act, to which they owe their existence. In such a case there is no ouster of the jurisdiction of the ordinary Courts for they never had any. The jurisdiction of the Courts can be excluded not only by express words but also by implication and there certainly is enough in s. 33 of the Municipal Act for this purpose. *Semble*: If the High Court has jurisdiction there might be a conflict between the view of the High Court and the orders of the Chief Judge in which the order of the Chief Judge must by the express terms of the Act prevail. BHAISHANKAR *v.* THE MUNICIPAL CORPORATION OF BOMBAY (1907). . **I. L. R. 31 Bom. 604**

BOMBAY PREVENTION OF GAMBLING ACT (BOM. IV OF 1887).

——ss. 4, 5, 6, 7—

See GAMBLING . **I. L. R. 31 Bom. 438**

BOND.

See DECREE . **I. L. R. 34 Calc. 150**

See INTEREST.

See LIMITATION ACT (XV OF 1877), SCH. II, ART. 75 . **I. L. R. 29 All. 431**

1.—*Instalment bond, registered—Cause of action—Default—Waiver — Limitation—Limitation Act (XV of 1877), Sch. II. Arts. 75 and 116.*—Where in an instalment bond it was provided that on default in the payment of one *kist* the creditor would be able to realise the entire amount due under the bond: *Held*, that it was open to the creditor, if default were made, to sue at once for the whole amount or if he so elected to waive the benefit of the proviso. Default was made in October 1897 and the present suit was brought in 1906 for instalments for six years before suit. *Held*, that the plaintiff was entitled to a decree, Art. 116 of Sch. II of the Limitation Act being applicable to the suit which was brought on a registered bond. RUP NÁRAIN BHATTACHARYA *v.* GOPI NATH MANDOL (1906) . . . **11 C. W. N. 903**

BOND—*concluded.*

2.—*Unconscionable bargain—Circumstances under which relief may be granted by the Court.*—A person of the age of some twenty-eight years, the son of a wealthy father, but of profligate habits and greatly in need of money, his father having refused to supply him, executed a bond to secure a sum of Rs. 500, with interest which amounted to Rs. 37-8-0 per cent. per annum, with six-monthly rests. The bond further contained a stipulation that the borrower should not be empowered to repay the money within three years. And if he did pay within three years, he should nevertheless be obliged to pay three years' interest at the rate mentioned. *Held*, that although it could not be said that the execution of this bond was procured by means of undue influence or that the rate of interest penal, nevertheless the bargain was an unconscionable bargain against which the Court might properly give relief. The High Court affirmed the decree of the lower appellate Court which gave the plaintiff the principal sum with simple interest at the rate of 24 per centum per annum. *Madho Singh* v. *Kashi Ram, I. L. R. 9 All. 228*; *Kirpa Ram* v. *Samiud-din Ahmad Khan, I. L. R. 25 All. 284*; *Kamini Sundari Chaodhrani* v. *Kali Prosunno Ghose, I. L. R. 12 Calc. 225*; *Kunwar Ram Lal* v. *Nil Kanth, L. R. 20 I. A. 112*; and *Rajah Mokam Singh* v. *Rajah Rup Singh, L. R. 20 I.A. 127*, referred to. BALKISHAN DAS *v.* MADAN LAL (1907) . . . . **I. L. R. 29 All. 303**

—— cancellation of—

3.—*Power of the District Magistrate to cancel a security bond.*—A District Magistrate has power under s. 125 of the Code of Criminal Procedure to direct the cancellation of a bond to keep the peace, executed on an order by a Subordinate Magistrate, on other grounds than that the bond is no longer necessary. *Barka Chandra Dey* v. *Janmejoy Dutt, I. L. R. 32 Calc. 948*, overruled. NABU SARDAR *v.* EMPEROR (1906).
I. L. R. 34 Calc. 1

——execution of—

4.—*Evidence Act (I of 1872), s. 68—Attesting witness, if available, must be called to prove a mortgage bond even if object is only to enforce the personal covenant.*—Where one of the witnesses who have attested a mortgage bond is available, the execution of such bond cannot, under s. 68 of the Evidence Act, be proved otherwise than by the evidence of such witness, even when the object of proving such execution has reference only to a personal covenant to pay, which is severable from the security created by the bond. VEERAPPA KAVUNDAN *v.* RAMASAMI KAVUNDAN (1907).
I. L. R. 30 Mad. 251

BREACH OF CONTRACT.

See ACT—1859—XIII.

See CONTRACT.

See DAMAGES.

BREACH OF CONTRACT—*concluded.*

—*Breaches of Contract Act (XIII of 1859), ss. 2 and 3—Expiry of term—Recovery of advance and enforcement of contract after term expired—Successive complaints, dismissal of—Effect.*—When the term of a contract coming within Act XIII of 1859 expires, the contract cannot be specifically enforced, nor can the money advanced be recovered, by a proceeding before the Magistrate under that Act, when successive complaints against a workman were dismissed. *Held*, that any remedy the complainant might have had under the Act was barred. KHODA BUKSH *v.* MOTI LAL JOHORI (1906) . . . 11 C. W. N. 247

BREACH OF CONTRACT ACT (XIII OF 1859).

——ss. 2, 3—

See BREACH OF CONTRACT.
11 C. W. N. 247

BREACH OF THE PEACE.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 5.

See SECURITY TO KEEP THE PEACE.

BREACH OF TRUST.

See CRIMINAL BREACH OF TRUST.

See ENDOWMENT.
I. L. R. 34 Calc. 587

BRIBE.

See PENAL CODE, S. 161.
I. L. R. 31 Bom. 335

BROKER ACTING AS PRINCIPAL.

——effect of—

See PRINCIPAL AND AGENT.
I. L. R. 34 Calc. 628

BURDEN OF PROOF.

See ONUS OF PROOF.

BURIAL.

——right of—

See JURISDICTION.
I. L. R. 30 Mad 15

BUSTEE IMPROVEMENT.

See PROSECUTION.
I. L. R. 34 Calc. 909

BYE-LAWS.

See RAILWAY COMPANY.

See CONTRACT—CONSTRUCTION OF CONTRACTS. I. L. R. 29 All. 228

See ULTRA VIRES. 11 C. W. N. 1099

C

CALCUTTA MUNICIPAL ACT (BENG. III OF 1899).

——ss. 15, 63 to 65—

See DAMAGES, SUIT FOR.
I. L. R. 34 Calc. 863

——s. 108—

See NOTICE. . . 11 C. W. N. 508

——ss. 198, 466, Sch. II, rules (1), (2) (7).

See LICENSE. I. L. R. 34 Calc. 913

——s. 341—

—*Encroachment—Projection—"Fixture"—Obstruction on public street—Calcutta Municipal Act (Bengal Act III of 1899), ss. 3, sub-s (37), 286, 336, 341.*—A verandah attached to and projecting from a house and supported on pillars sunk down into the soil between a street and a drain which runs between the street and the front of the house, is a "fixture" and "a projection, encroachment or obstruction over or on a public street" within the meaning of s. 341 of the Calcutta Municipal Act. CORPORATION OF CALCUTTA *v.* IMADUL HUQ (1907) . I. L. R. 34 Calc. 844

——ss. 408, 419, 574, 631—

See PROSECUTION.
I. L. R. 34 Calc. 909

——ss. 408, 645—

See HIGH COURT.
I. L. R. 34 Calc. 3

——ss. 449, 450, 452 and 579—

—*Discretion of Magistrate—Demolition of buildings—Limitation.*—The Municipal Magistrate should exercise the discretion vested in him under ss. 449, 450 and 452 of the Calcutta Municipal Act (Beng. Act III of 1899) with due regard to those rules, which guide Courts of Equity in granting injunctions, with this difference that he has also to consider whether or not a building ought to be demolished on the ground of its being a danger or obstruction to the public. The discretion is to be used after receiving evidence and hearing the defence. *Abdul Samad v. The Corporation of Calcutta, I. L. R. 33 Calc. 287*, referred to. The fact that in respect of the same deviation from the sanctioned plan of a building, the Corporation instituted two different proceedings at different times, one under s. 579 and another under s. 449, does not deprive the Magistrate of his discretion

CALCUTTA MUNICIPAL ACT (BENG. III OF 1899)—*concluded.*

under s. 452 of the Act. The Calcutta Municipal Act does not prescribe any period of limitation for an action under s. 449 or s. 450, but the Court should, in directing a demolition, consider how far the delay in the institution of the proceedings would affect the action. CHUNI LAL DUTT *v.* CORPORATION OF CALCUTTA (1906) . I. L. R. 34 Calc. 341

CALCUTTA SMALL CAUSE COURT, JURISDICTION OF.

See TITLE. . I. L. R. 34 Calc. 823

CANCELLATION OF INSTRUMENT.

See MAHOMEDAN LAW.
I. L. R. 31 Bom. 271

CANTONMENTS ACT (XIII OF 1889).

——s. 13—

—Supply—Intoxicating drug—Supply of liquor to a European soldier—Servant of a soldier buying liquor with soldier's money for soldier's use.—The accused, a servant of a soldier, bought with his master's money liquor from a shop in obedience to his master's directions and gave it to him. On these facts, the Magistrate held that the act of the accused amounted to "supplying" liquor to a soldier within the meaning of the term as used in s. 13 of the Cantonments Act (XIII of 1889), and convicted and sentenced him under the section. *Held,* reversing the conviction and sentence, that the term "supply" in s. 13 of the Cantonments Act (XIII of 1889) must have a restricted meaning put upon it and it is inapplicable in the case of a servant giving his master liquor belonging to the master himself. Its context "barters or sells" indicates that it has the same idea underlying it in common with them. It also must relate to a transaction between two persons dealing at arm's length and therefore independent of each other. EMPEROR *v.* PASCAL SHIMAU (1907) I. L. R. 31 Bom. 523

CARRIERS.

—Contract to carry partly by river and partly by land—Liability of carriers—Damages—Divisible contract—Carriers Act (III of 1865), ss. 3 to 5, 8—Railways Act (IX of 1890), s. 75—Excepted articles—Misdescription of goods.—In a suit for damages for loss of goods carried partly in steamers of one company and partly by trains of another, the plaintiff failed to declare the value and description of the goods as required under the provisions of the Carriers Act and the Railways Act:—*Held,* that so far as the journey is by river, the steamer company is entitled, as regards the acts of its agents and servants, to the protection afforded by the provisions of the Carriers Act, and so far as the journey is by rail, it is similarly entitled to claim the protection afforded by the Railways Act. *Le*

CARRIERS—*concluded.*

Conteur v. *The London and South-Western Railway Company, L. R. 1 Q. B. 54,* and *Baxendale* v. *The Great Eastern Railway Company, 38 L. J. Q. B. 137,* referred to. NARANG RAI AGARWALLA *v.* RIVERS STEAM NAVIGATION COMPANY, LD. (1907).
I. L. R. 34 Calc. 419

——liability of—

See CARRIERS . I. L. R. 34 Calc. 419

See RAILWAY COMPANY.

—Carriers Act (III of 1865), ss. 3, 8, and 9—Through booking of goods by steamer and rail—Liability of Steamer Company for loss during transmission by rail—Railways Act (IX of 1890), s. 75.—The plaintiffs consigned a parcel of silk articles through the India General Steam Navigation and Railway Company, Ld., for delivery at Khagra, knowing that the articles would be carried in the first instance by the defendant company, then by the Eastern Bengal State Railway, and then by the East Indian Railway Company. They did not declare the value of the articles, which exceeded R100, nor disclose the contents of the parcel. It was found that the goods were lost after they had been made over to the Eastern Bengal State Railway. *Held,* that the agreement was in substance with both the Steam Navigation Company and the Railway Companies and the former could not be held responsible for the loss. *Narang Rai Agarwalla* v. *Rivers Steam Navigation Company, I. L. R. 34 Calc. 419 ; 11 C. W. N. 1071,* followed. GOKUL CHANDRA DAS *v.* INDIA GENERAL STEAM NAVIGATION AND RAILWAY COMPANY, LD. (1907).
11 C. W. N. 1076

CARRIERS' ACT (III OF 1865).

——ss. 3, 5, 8—

See CARRIERS . I. L. R. 34 Calc. 419

——ss. 3, 8, 9—

See CARRIERS, LIABILITY OF.
11 C. W. N. 1076

CASH ALLOWANCE.

See PENSIONS ACT.
I. L. R. 31 Bom. 512

CATTLE, ILLEGAL SEIZURE OF.

See JURISDICTION.
I. L. R. 34 Calc. 926

CATTLE TRESPASS ACT (I OF 1871).

See JURISDICTION OF CRIMINAL COURTS.

——s. 20, Sch. II—

—Illegal seizure of cattle—"Offence"—Power of District or specially authorized Magistrate to transfer such case—Subordinate Magistrate, power

CATTLE TRESPASS ACT (I OF 1871)— *concluded.*

of, to try—Criminal Procedure Code (Act V of 1898), ss. 4(a), 192, and Sch. II, last clause.—The illegal seizure or detention of cattle, referred to in s. 20 of the Cattle Trespass Act (I of 1871), is an "offence" under s. 4(*o*) of the Criminal Procedure Code of 1898 and is, by virtue of the last clause of Sch. II thereof, triable by any Magistrate; and though, under s. 20 of the Cattle Trespass Act, a complaint of such illegal seizure or detention must be entertained by a District Magistrate or one specially authorized as required by the section, such Magistrate has power, under s. 192, to transfer such cases, after taking cognizance, to any Subordinate Magistrate for trial. *Shama* v. *Lechhu Shekh, I. L. R. 23 Calc. 300,* and *Raghu Singh* v. *Abdul Wahab, I. L. R. 23 Calc. 442,* declared obsolete. BUDHAN MAHTO *v.* ISSUR SINGH (1907).
I. L. R. 34 Calc. 926

CAUSE OF ACTION.

See CIVIL PROCEDURE CODE, s. 43.
I. L. R. 29 All. 256

See DEFAMATION. I. L. R. 34 Calc. 48

See FALSE IMPRISONMENT.
I. L. R. 29 All. 44

See JOINDER OF CAUSES OF ACTION.

See LIMITATION ACT, SCH. II, ART. 49.
I. L. R. 30 Mad. 12

See POSSESSION. I. L. R. 29 All. 52

——misjoinder of—

See CIVIL PROCEDURE CODE.
I. L. R. 31 Bom. 516

See MISJOINDER. I. L. R. 34 Calc. 662

CENTRAL PROVINCES CIVIL COURTS ACT (II OF 1904).
I. L. R. 34 Calc. 636

CERTIFICATE, EFFECT OF.

See PUBLIC DEMANDS RECOVERY ACT, ss. 8, 10 . I. L. R. 34 Calc. 811

CERTIFICATE OF SALE.

See SALE FOR ARREARS OF REVENUE.
I. L. R. 34 Calc. 381

"CERTIFIED PURCHASER."

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 317. I. L. R. 31 Bom. 61

CESS, ASSESSMENT OF.

—Cess Act (IX of 1880, B. C.), ss. 4, 41—Mela, profits of, if assessable with road cess—"Annual value"—"Rent"—"Tenure-holder"—Stall-holders and vendors at mela, if tenants or mere licensees—"Immoveable property"—Levy of cess over and above income-tax, if legal.—It cannot be affirmed as a general proposition that the liability to pay income-tax carries with it as a necessary consequence exemption from Road and Public Works Cesses. *Umed Rasul Shaha Fakir* v. *Anath Bandhu Chowdhuri, I. L. R. 28 Calc. 637,* considered and explained. A *mela* is annually held for 20 days from the 5th to the 25th Falgun on lands which are included in the *jotes* or holdings of agricultural tenants (but on which no crops are standing at the time the fair is held) under an arrangement between the zemindar and the holders of the *mela* to which the tenants are not parties. The Collector assessed Road and Public Works cess not only on the rents paid to the zemindar by the raiyats, but also on the profits realised by certain *ijaradars* under the *mela*-holders from the stall-holders and vendors of live-stock, etc., at the *mela*. *Held,* that these profits are not rent payable by either cultivating raiyats or by other persons in the actual use or occupation of land within the definition of 'annual value' in s. 4 of the Cess Act and cannot be assessed with road-cess. *Per* RAMPINI, *C.J.*—The profits of a *mela* may come within the definition of rent paid for the actual use and occupation of land by persons other than cultivators or of immoveable property as defined in s. 4 of the Cess Act. But whether in any particular case they do so or not will depend on the terms of the lease in that case. *Per* BRETT and WOODROFFE, *JJ.*—A *mela* or fair does not come within the definition of immoveable property in s. 4 of the Cess Act. The holders of the *mela* in this case or the *ijaradars* under them are licensees and not tenure-holders within the Act. *Per* RAMPINI, *C.J.*—The definition of tenure-holder in the Act is very wide and may include persons in the enjoyment of the profits of a *mela*. But whether in any particular case such persons are tenure-holders or not will depend on the terms of the lease. *Per* BRETT and WOODROFFE, *JJ.* (RAMPINI, *C.J.*, MOOKERJEE, *J.*, *contra*).—The definition of "annual value" contemplates that the rent shall be payable by persons in occupation during the year, not by persons occupying the land for 20 days during each year. *Per* MOOKERJEE, *J.*—The stall-holders and other persons attending the *mela* for the purpose of selling articles of merchandise are licensees and not tenants. *Per* RAMPINI, *C.J.*—The sums payable by stall-keepers may come within the definition of rent. SECRETARY OF STATE FOR INDIA *v.* KARUNA KANTA CHOWDHURY (1907) . 11 C. W. N. 1053; I. L. R. 35 Calc. 82.

CESS, ASSESSMENT OF—*concluded.*

CESS ACT (BENG. IX OF 1880).

—— ss. 4, 5, 6—

See CESS, ASSESSMENT OF.
11 C. W. N 1053 : I. L. R. 35 Calc. 82

CESTUI QUE TRUST.

—Appointment of Cestui que trust as trustee—Indian Trusts Act (II of 1882).—There is no provision in the Indian Trusts Act (II of 1882) that

CESTUI QUE TRUST—*concluded.*

a *cestui que trust* shall not be appointed a trustee. He is not as such incapacitated from being trustee for himself and others; but as a general rule he is not altogether a fit person for the office in consequence of the probability of a conflict between his interest and his duty. ASHIDBAI *v.* ABDULLA (1906).

I. L. R. 31 Bom. 271

CHAIRMAN OF MUNICIPALITY, POWER OF.

See DAMAGES, SUIT FOR.

I. L. R. 34 Calc. 863

CHALGENI OR MULGENI TENURE.

See LANDLORD AND TENANT.

I. L. R. 30 Mad. 528

CHAMBER JUDGE.

See GUARDIAN AND WARDS ACT.

I. L. R. 31 Bom. 590

CHARGE.

See CHARGE TO JURY.

See CRIMINAL PROCEDURE CODE.

I. L. R. 31 Bom. 218

See FALSE CHARGE.

See JOINDER OF CHARGES.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 88 . **I. L. R. 29 All. 205**

——heads of—

See JURY, TRIAL BY.

I. L. R. 34 Calc. 698

——payment of—

—Equity in favour of a person paying off a subsisting charge on property.—Where there is a subsisting charge on certain property paid off by the person in possession, it is equitable that when the plaintiff reclaims the estate, credit should be given to that person for the payment of the mortgage which the plaintiff would have had to meet. *Mahomed Shumsool* v. *Shewukram, L. R. 2 I. A. 17; Lomba Gumaji* v. *Vishwanath Amrit, (1893) P. J. 301,* and *Ranu* v. *Kedu, (1894) P. J. 89,* followed. ASHIDBAI *v.* ABDULLA (1906).

I. L. R. 31 Bom. 271

CHARGE TO JURY.

Col.

1. MISDIRECTION. 50

——recording of—

See MISDIRECTION.

I. L. R. 34 Calc. 698

See JURY, TRIAL BY.

CHARGE TO JURY—*concluded.*

1. MISDIRECTION.

1.—*Misdirection – Criminal Procedure Code (Act V of 1898), ss. 297, 537—Judge bound to state all the elements of offences and deal with evidence, differentiating evidence against each of the accused—Failure to do so not a mere irregularity.*—Under s. 297 of the Code of Criminal Procedure, the Judge must explain to the jury all the essential elements of the offence with which the prisoner is charged. An omission to do so is not a mere irregularity within the meaning of s. 537. It is a failure to comply with an express provision of the law and will vitiate the conviction. The Judge should also point out to the jury the evidence against each of the accused and the circumstances which distinguish the cases of some of the accused from that of the others. *Mangan Das* v. *Emperor, I. L. R. 29 Calc. 379,* referred to and followed. MARI VALAYAN *v.* EMPEROR (1906).

I. L. R. 30 Mad. 44

2.—*Charge to jury – Misdirection to the Jury.*—The omission by the Judge in his charge to the jury to mention the fact of the original witnesses named in the first information having been abandoned by the prosecution, of two of them having given evidence for the defence, and of the witnesses actually examined for the prosecution being entirely new witnesses, is a sufficient misdirection to justify the setting aside of the conviction. DASARATH MANDAL *v.* EMPEROR (1907).

I. L. R. 34 Calc. 325

3.—*Trial by Jury - Misdirection—Expression of opinion by Judge on facts—Omission to point out material evidence—Charge, heads of—Penal Code (Act XLV of 1860), s. 325.*—An expression of opinion by the Judge on the facts without telling the jury that they are at liberty to form their own opinion in regard thereto, and also without cautioning them to give the accused the benefit of a reasonable doubt, amounts to a misdirection. Where the medical opinion was that the injuries of the deceased were not, in the case of a man in ordinary health, dangerous to life: *Held,* that the Judge should have specially called the attention of the Jury to such opinion. Where the accused were charged under ss. 147, 148, 149, 323 of the Indian Penal Code: *Held,* that they could not be convicted under s. 325 of the Penal Code as they had not been called upon to meet such a charge, and it was not minor to, or included in, a charge under s. 323 of the Code. *Ram Sarup Rai* v. *Emperor, 6 C. W. N. 98,* followed. It is not only desirable but necessary that the charge should be recorded in an intelligible form and with sufficient fulness to satisfy the Appellate Court that all points of law arising in the case were clearly and correctly explained to the jury. The omission to instruct the jury as to their verdict, if they found that there was no unlawful assembly but that hurt was caused by any one or more of the accused, is a serious misdirection. PANCHU DAS *v.* EMPEROR (1907).

I. L. R. 34 Calc. 698: 11 C. W. N. 666

CHARITABLE BEQUEST.

See HINDU LAW—WILL.
I. L. R. 34 Calc. 5

See WILL . . I. L. R. 31 Bom. 583

CHAUKIDAR.

See PENAL CODE (ACT No. XLV OF 1860), s. 223 . . I. L. R. 29 All. 377

CHAUKIDARI ACT (BENG. VI OF 1870).

—— s. 55—

—Revenue Sale Law (Act XI of 1859), ss. 5, 6—Jurisdiction of Collector to sell for three years' assessment—Irregularities—Where a sale was held for the arrears of chaukidari assessment for three years by a Collector under s. 55 of the Chaukidari Act and a notice was served under s. 6 of Act XI of 1859 : *Held*, that it was a mere irregularity which did not render the sale a nullity. JOTINDRA MOHON TAGORE *v.* JOGENDRA NATH ROY (1907) . . . . . 11 C. W. N. 1107

CHAUKIDARI CHAKRAN LANDS.

1.—*Limitation Act (XV of 1877), Sch. II, Arts. 113, 142, 144—Chaukidari chakran lands—Resumption by Government—Putni lease - Suit by putnidar for possession of the chakran lands—Village Chaukidari Act (Bengal Act VI of 1870), ss. 48, 51.*—By virtue of a *putni* lease granted by the defendant landlord in 1854, the plaintiff was entitled to the chaukidari chakran lands of the mehal, which were subsequently resumed by Government, and not made over to the zemindar till 1899. Upon a suit by the putnidar to recover possession of the chakran lands, the defendant contended that the suit was barred by limitation under Art. 113 of the Limitation Act. *Held* that, inasmuch as the lands were not in possession of the plaintiffs nor in that of the defendant, until they were made over to the latter by Government, the suit was one for the specific performance of the contract of 1854, and the period of limitation applicable would therefore be that prescribed by Art. 113, and not Art. 142 or Art. 144 of Sch. II of the Limitation Act. RANJIT SINGH *v.* RADHA CHARAN CHANDRA (1907).
I. L. R. 34 Calc. 564

2.—*Resumption by Government—Putni lease—Right of putnidar in the resumed lands—Bengal Act VI of 1870, s. 51.*—By a putni lease the zemindar transferred all the lands appertaining to an estate to the putnidar for an annual rental. Subsequently the Collector resumed all the chaukidari chakran lands situate within the said estate, under Bengal Act VI of 1870, and transferred them to the zemindar of the estate, who again settled the lands with some tenants. The putnidar brought a suit for recovery of possession of those lands on the ground that he was entitled to them under the terms of the putni lease. *Held*, that the putnidar was entitled to the possession of the disputed lands on condition

CHAUKIDARI CHAKRAN LANDS—*concluded.*

of his paying the additional revenue assessed thereon by Government. *Kashim Sheik* v. *Prasanna Kumar Mukerjee, I. L. R. 33 Calc. 596*, distinguished. *Per* MOOKERJEE, *J.*—Under s. 41 of Reg. VIII of 1793 the chaukidari chakran lands must be taken to form a part of the parent estate, in which they are situated. *Jay Kishen Mookerjee* v. *The Collector of East Burdwan, 10 Moo. I. A. 16*, and *Jonab Ali* v. *Rakibuddin Mallik, 1 C. L. J. 303*, referred to. Even if the effect of the resumption proceedings under Bengal Act VI of 1870 was to create a new title in the zemindar, the rights of the putnidar would be protected by s. 51 of the Act. KAZI NEWAZ KHODA *v.* RAM JADU DEY (1906).
I. L. R. 34 Calc. 109

CHEATING.

See PENAL CODE (ACT XLV OF 1860), ss. 280, 420 . I. L. R. 29 All. 141

CHILD WITNESS.

See WITNESS . . 11 C. W. N. 51

CHOTA NAGPUR ENCUMBERED ESTATES ACT (BENG. VI OF 1876).

——s. 10—

—Jurisdiction—Lease of land lying outside Chota Nagpur—Question of law taken for the first time in second appeal.—Where a certain estate in the district of Manbhum was taken charge of under the Chota Nagpur Encumbered Estates Act, and thereupon the manager proceeded to cancel under that Act a lease of land lying in the district of Bankura : *Held*, that the Act had no application inasmuch as the Act applies only to land in Chota Nagpur. The High Court allowed this question to be raised for the first time in second appeal. AJODHYA NATH CHOWDHURY *v.* KESHUB CHANDRA MUKERJEE (1907) . 11 C. W. N. 1127

CHOTA NAGPUR LANDLORD AND TENANT PROCEDURE ACT (BENG. I OF 1879).

——ss. 123, 125—

—Landlord and tenant—Decree for consolidated rent of several tenures, whether bind tenures—Decree whether obtained against sole recorded tenant—Onus—Right of auction-purchaser of share in tenure.—A decree for the consolidated rent of several tenures held by the same tenants does not bind the tenures or any of them. Where a tenure was sought to be sold in execution of a decree for rent obtained against one of the tenants, after the shares of the other tenants had passed by auction sale to a stranger on the allegation that the tenant against whom it had been obtained was the sole recorded tenant of the landlord : *Held*, that whether this was so or not was

CHOTA NAGPUR LANDLORD AND TENANT PROCEDURE ACT (BENG. I OF 1879)—*concluded.*

a matter specially within the knowledge of the landlord and the *onus* was on him to prove it. BAIKANTA NATH ROY *v.* THAKUR DEBENDRA NATH SAHI (1906) 11 C. W. N. 676

"CHOWDHRIS," SUIT FOR DECLARATION AS.

See DECLARATORY DECREE, SUIT FOR.
I. L. R. 29 All. 683

CIRCUMSTANTIAL EVIDENCE.

See MURDER . . 11 C. W. N. 1085

CIVIL COURT.

See JURISDICTION OF CIVIL COURTS.

——inherent powers of—

See GUARDIAN AD LITEM.
I. L. R. 29 All. 640

CIVIL COURTS ACT (XII OF 1887).

——ss. 18, 19, 21—

See RESTITUTION OF CONJUGAL RIGHTS.
I. L. R. 34 Calc. 352

CIVIL PROCEDURE CODE (ACT XIV OF 1882).

——s. 2—

See APPEAL . I. L. R. 34 Calc. 584

——s. 11—

See BOMBAY MUNICIPAL ACT.
I. L. R. 31 Bom. 604

——s. 13—

See HINDU LAW . I. L. R. 29 All. 331

——s. 13, Expl. II—

See RES JUDICATA.
I. L. R. 34 Calc. 223

——ss. 13, 562—

See RES JUDICATA.
I. L. R. 30 Mad. 203

——s. 13—

— Res judicata—Award of committee of taluqdars appointed under s. 3 of the Oudh Estates Act (I of 1869)—Question of adoption—Claim in former suit as adopted son—Estoppel—Evidence and proof of adoption Evidence of adoption where lapse of time precludes proof—Presumption as to probability from conduct of parties.—In a suit by the appellant against the respondent for a share in certain family property the question was whether the respondent had been in

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

1853 validly adopted into another family. *Held*, that the committee of taluqdars appointed under s. 33 of Act I of 1869 (Oudh Estates Act) to decide on claims for maintenance is not such a Court as is described by s. 13 of the Code of Civil Procedure (Act XIV of 1882), and their award refusing the respondent maintenance in his own family on the ground that he had been adopted into another was therefore not *res judicata* in the present suit. The committee had no jurisdiction to decide the question of adoption, and the affirmation of their award by the Financial Commissioner could not give judicial validity to their decision on a point outside their jurisdiction. The fact that the respondent had in 1879 on the death of his alleged adoptive mother claimed to succeed her as the adopted son of her deceased husband, and so secure the succession to which the predecessor in title of the appellant was then entitled, though he did not oppose the respondent's claim, did not estop the respondent from denying the alleged adoption in this suit. To establish the fact of a valid adoption it was essential for the appellant to show that it was made by the direction of the deceased husband of the adoptive mother, and that the respondent's father had given him in adoption. In the absence of proof, which the lapse of time made impossible, it was incumbent on the appellant, before any presumption that those conditions were fulfilled was justified, to establish an initial probability that the adoption was likely to have been validly made, and that the conduct of the parties cognizant of the facts had at least been consistent with such an hypothesis. But the evidence rather showed the contrary ; and no weight could be given to the statements of the respondent, as they fell short of founding an estoppel, and as he had asserted or denied the adoption just as it suited his purpose throughout the whole of the protracted litigation between the members of the family. HARSHANKAR PARTAB SINGH *v.* RAGHURAJ SINGH (1907) I. L. R. 29 All. 519 : L. R. 34 I. A. 125

——ss. 13, 43—

—Res judicata—Usufructuary mortgage—Suit for possession of mortgaged property—Tender of mortgage money—Deposit in Court—Redemption decree—Second suit to recover mesne profits from the date of deposit to the date of recovery of possession of mortgaged property—Transfer of Property Act (IV of 1882), ss. 62, 83—Position of mortgagee in possession after the tender or deposit of mortgage money.—In 1884 the plaintiffs executed a usufructuary mortgage in favour of the defendant and placed him in possession of the property. In 1901 the plaintiffs tendered the amount of the principal to the defendant, but it was not accepted. The plaintiffs in consequence filed a suit, under s. 62 of the Transfer of Property Act (IV of 1882), to recover possession of the mortgaged property, and at the same time under s. 83 of the Act deposited the amount of the principal in Court as the amount payable on the mortgage. The Court passed a decree for possession. In 1904 the plaintiff filed another suit to recover mesne profits from the

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

defendant from the date of the deposit to the date when he recovered possession of the mortgaged property from the defendant in execution of the redemption decree in the previous suit. The claim was disallowed on the ground of *res judicata*. *Held*, that the plaintiffs having failed to ask for mesne profits in the previous suit, his present claim was barred either under s. 13 or 43 of the Civil Procedure Code (Act XIV of 1882). The profits derived by a mortgagee after a proper tender made or after the amount due has been deposited in Court are profits for which he has to account to the mortgagor in virtue of a liability tacked on, so to say, by the statute to the mortgage contract; and as such a claim to them by the mortgagor is one arising from and connected with his right to redeem or recover possession of the property. From the date of the tender or of the deposit, as the case may be, the mortgagee continues as mortgagee but with a statutory liability to account for the profits received by him from that date. He is not then a mere trespasser but a mortgagee still, holding the property as a kind of trustee for the mortgagor and as such accountable to the latter for the profits. RUKHMINIBAI *v.* VENKATESH (1907) . . . . **I. L. R. 31 Bom. 527**

——s. 26—

See MISJOINDER . **I. L. R. 34 Calc. 662**

——s. 27—

See PARTIES, SUBSTITUTION OF.
I. L. R. 30 Mad. 419

—— s. 28—

—Misjoinder of parties and causes of action—"In respect of the same matter," meaning of—Practice.—The plaintiff sued two sets of defendants to recover from either the one or the other a sum of money for the rent of his godown. The plaintiff agreed to let a godown to defendants 1—6 from 1st May 1906. At the date of the agreement the godown was in the possession of Messrs. *N.* and Co. Defendants 1—6 alleged that they did not get possession of the premises in terms of this agreement; that only one compartment out of three was given to them on the 22nd May; that they did not get possession of the other two compartments and in consequence they had to hire other premises. Messrs. *N.* and Co. pleaded that there was an oral agreement with the plaintiff that they should occupy the godown till the end of May 1906; that they gave up possession of one compartment of the godown before the 22nd May 1906, and on the 22nd May they gave up possession of the remaining portion to the plaintiff and the first set of defendants. The defendants all pleaded that the suit as framed was bad by reason of misjoinder of parties and of causes of action. *Held*, disallowing the objection, that the suit was properly constituted. The most convenient way to try all the questions arising between the plaintiff and the defendants and the two sets of defendants *inter se* would be by one suit where all the three parties are before the Court as parties. The subject-matter in respect of which the plaintiff seeks relief is the rent of his godown. It is the same matter as regards both sets of defendants, and both sets of defendants are interested in the adjudication of the questions involved in the suit. The general principle governing the joinder of defendants would seem to be that there must be a cause of action in which all the defendants are more or less interested, although the relief against them may vary, but that separate causes of action against separate defendants quite unconnected are not involving any common question of law or fact cannot safely be joined in one action. The object of s. 28 seems to be to avoid multiplicity of suits if it could be done without embarrassment to any of the defendants. *Madan Mohun Lal* v. *Holloway*, *I. L. R. 12 Calc. 555*, followed; *Sadler* v. *Great Western Railway Company*, [*1896*] *A. C. 450*, distinguished. MOWJI MONJI *v.* KUVERJI NANAJI (1907) **I. L. R. 31 Bom. 516**

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——s. 43—

—Suit to recover fees for medical attendance—Fees partly secured by a promissory note—Separate suits upon the promissory note and for the unsecured balance—Latter suit barred.—*A*, a doctor, agreed with *B* to accompany *B* to Hardwar as his medical attendant on a fee of R100 a day. After seven days *B* gave *A* a promissory note for Rs. 700 representing seven days' fees. *B*, who was a vakil, also promised to assist *A* professionally in certain litigation. *B*, however, died before he could fulfil his agreement to render professional services. *A* sued *B*'s son upon the promissory note first, and subsequently in a separate suit for the balance of his fees for attendance at Hardwar, under the alleged agreement and for fees for later attendance at Benares. *Held*, that the second suit was barred by the provisions of s. 43 of the Code of Civil Procedure so far as the fees for attendance at Hardwar were concerned, though not in respect of the other fees claimed. PEEONATH MUKERJI *v.* BISHNATH PRASAD (1906)
I. L. R. 29 All. 256

——s. 44, Rule (b)—

—Meaning of the rule—Claim by an heir "as such."—H. brought a suit against *M.* and others, the executors of *I.* in which two causes of action were united. One was in respect of property in the possession of the defendants which the plaintiff claimed by right of inheritance to her father *E. S.*, and *A.*, his widow. The other claim was in respect of money alleged to have been paid by the plaintiff to *I.* and invested by him on her behalf. The defendants contended that there was a misjoinder of causes of action: *Held by* BATTY, *J.*, following *Ashabai* v. *Haji Tyeb Haji Rahimtulla*, *I. L. R. 6 Bom. 399*, that there was a misjoinder within the meaning of s. 44 (*b*) of the Civil Procedure Code The plaintiff appealed. *Held*, (reversing the decision of the lower Court) that the first of the two causes of action above set out was not a claim by an heir as such. *Ashabai* v.

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

Haji Tyeb Haji Rahimtulla, I. L. R. 6 Bom. 399, not followed. *Per* JENKINS, *C.J.*—Those to whom rule (*b*) of s. 44 of the Code relates have the common characteristic that they owe their legal condition to the death of another. But there are others of whom this can be predicated as, for instance, legatees or next-of-kin, who are not named in rule (*bi*). Executors, administrators, and heirs have the characteristic in common, not shared by legatees and next-of-kin, namely, that not only do they acquire title from the deceased, but they may represent him. In this is to be found the clue to the meaning of the rule. HAFIZABOO *v.* MAHOMED CASSUM (1906) **I. L. R. 31 Bom. 105**

——s. 45—

See AGRA TENANCY ACT. **I. L. R. 29 All. 18**

—*Misjoinder of causes of action—Multifariousness—Property claimed under one title from defendants professing to hold under various titles.*—The plaintiffs sued as heirs of their father to recover various portions of their father's estate from the hands of different alienees. *Held,* that the fact that the defendants set up different titles to the various portions held by them would not make the suit bad for multifariousness. The plaintiffs had one cause of action, namely, the right on the death of their father to recover their shares of his property. *Ganeshi Lal* v. *Khairati Singh, I. L. R. 16 All. 279,* distinguished. *Ishun Chunder Hazra* v. *Rameswar Mondol, I. L. R. 24 Calc. 831, Nundo Kunwar Nasker* v. *Bonomali Gayan, I. L. R. 29 Calc. 871, Indar Kuar* v. *Gur Prasad, I. L. R. 11 All. 33,* and *Mazhar Ali Khan* v. *Sajjad Husain Khan, I. L. R. 24 All. 358,* referred to. PARBATI KUNWAR *v.* MAHMUD FATIMA (1907) **I. L. R. 29 All. 267**

——s. 54—

—*Rejection of plaint—Procedure—Plaint not to be rejected in part. Held,* that under s. 54 of the Code of Civil Procedure a Court cannot reject a plaint in part. RAGHUBANS PURI *v.* JYOTIS SWARUPA (1907) . **I. L. R. 29 All. 325**

——s. 54, cl. (b)—

See PLAINT, REJECTION OF. **I. L. R. 34 Calc. 20**

——ss. 55, 562, 566—

See BURDEN OF PROOF. **I. L. R. 29 All. 184**

——ss. 102, 103, 157—

See DISMISSAL FOR DEFAULT. **I. L. R. 30 Mad. 274**

——ss. 102, 103, 157, 158—

See DISMISSAL OF SUIT. **I.L. R. 34 Calc. 235**

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——103—

—*Land Acquisition Act (I of 1894), ss. 30 53 and 54—Reference to Civil Court for apportionment of compensation.*—S. 103 of the Civil Procedure Code applies to a reference under s. 30 of the Land Acquisition Act, the party at whose instance the reference was obtained occupying the position of the plaintiff and his opponents that of defendants. *Ezra* v. *The Secretary of State, 7 C. W. N. 249: I. L. R. 30 Calc. 36; Kishan Chand* v. *Jagannath Prasad and Ganesh Prasad, I. L. R. 25 All. 133,* approved. BEHARY LAL SUR *v.* NANDA LAL GOSWAMI (1907) . . **11 C. W. N. 430**

——s. 108—

See EX PARTE DECREE. **I. L. R. 29 All. 623**

See PRESIDENCY SMALL CAUSE COURTS ACT. . . **I. L. R. 31 Bom. 45**

1.—*Suit to set aside decree on the ground of fraud—Sole question raised already disposed of in proceedings under s. 108 of the Code of Civil Procedure.*—In a suit to set aside a decree upon the ground of fraud, the sole fraud alleged was with respect to service of summons on the defendant. This question had already been gone into and decided by two Courts adversely to the defendant upon application made by him under s. 108 of the Code of Civil Procedure. *Held,* that the suit was not maintainable. *Radha Raman Shaha* v. *Pran Nath Roy, I. L. R. 28 Calc. 175,* and *Khagendra Nath Mahata* v. *Pran Nath Roy, I. L. R. 29 Calc. 395,* distinguished. PURAN CHAND *v.* SHEODAT ROY (1906). **I. L. R. 29 All. 212**

2.—*Decree ex parte—Application to set aside decree—Right of representative to continue proceedings initiated by defendant.*—Where proceedings under s. 108 of the Code of Civil Procedure have been initiated by the defendant, the legal representative of the defendant is entitled to continue such proceedings. *Janki Prasad* v. *Sukhrani, I. L. R. 21 All. 274,* distinguished. *Ganoda Prasad Roy* v. *Shib Narain Mukerjee, I. L. R. 29 Calc. 33,* referred to. BETI JEO *v.* SHAM BIHARI LAL (1907) . . . **I. L. R. 29 All. 574**

3.—*Ex parte decree against more defendants than one—Execution against some of the defendants—Application by the other defendants to set aside the decree—Limitation—Limitation Act (XV of 1877), Sch. II, Art. 164.*—When a decree is passed against more defendants than one, and the decree is executed against some of the defendants only, that is not a process for enforcing the judgment as against the other defendants, within the meaning of Art. 164, Sch. II of the Limitation Act (XV of 1877). *Ravji Ramchandra* v. *Ramji Bhikaji, (1888) P. J. 56,* followed. HANMANT *v.* SHANKAR (1907) . . . **I. L. R. 31 Bom. 303.**

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——ss. 108, 540—

See EX PARTE DECREE.
I. L. R. 30 Mad. 54

——ss. 108, 560, 582—

—Limitation Act (XV of 1877), Arts. 164, 169—Art. 164 applies when unserved defendant seeks under s. 108 of the Code of Civil Procedure to set aside whole proceedings after appeal.—After an appeal is filed against the decree of a lower Court, the power to set aside the original decree on an application under s. 108 of the Code of Civil Procedure becomes vested in the Appellate Court by virtue of s. 582 of the Code of Civil Procedure. *Ramanadhan Chetti* v. *Narayanan Chetti, I. L. R. 27 Mad. 602*, referred to. An application to the Appellate Court by a defendant, who was not duly served with summons in the lower Court and who has not appealed to set aside the original decree under s. 108 of the Code of Civil Procedure is, for purposes of limitation, governed by Art. 64 and not Art. 169 of Sch. II of the Limitation Act. SANKABA PHATTA *v.* SUBBAYA BHATTA (1907).
I. L. R. 30 Mad. 535

——s. 130—

See INSPECTION OF DOCUMENTS.
I. L. R. 30 Mad. 230

——s. 146—

See WRITTEN STATEMENT.
11 C. W. N. 871

——s. 199—

See JUDGMENT. **I. L. R. 34 Calc. 293**

——s. 203, paras. (1), (2)—

—Court invested with Small Cause Court powers—Decision—Reasons—Provincial Small Cause Courts Act (IX of 1887), ss. 17 and 32.—The judgment of a Court invested with Small Cause Court powers need not contain more than the points for determination and the decision thereupon; the practice and procedure of such Courts being determined in the matter of judgments by paragraph (1) of s. 203 of the Civil Procedure Code (Act XIV of 1882). *Ramchandra* v. *Ganesh, I. L. R. 23 Bom. 382*, dissented from. NARAYAN *v.* BHAGU (1907) . . . . **I. L. R. 31 Bom. 314**

——ss. 206, 622—

—Judgment—Decree—Addition to the decree not warranted by the judgment—Jurisdiction—Revision.—Proceedings under s. 206 of the Civil Procedure Code (Act XIV of 1882) terminate in an order, and such an order can be dealt with in revision under s. 622 of the Civil Procedure Code (Act XIV of 1882). The order under s. 206 of the Civil Procedure Code (Act XIV of 1882) is beyond jurisdiction if it makes an addition to the decree not warranted by the judgment. BAI SHRI VAKTUBA *v.* AGARSANGJI (1907) . **I. L. R. 31 Bom. 447**

CIVIL PROCEDURE CODE (ACT XIV 1882)—*continued.*

——s. 210—

—Power of High Court to make its money-decrees payable by instalments.—Under s. 210 of the Civil Procedure Code this Court has the power to make its money-decrees payable by instalments. *Per* CURIAM.—The general impression prevailing in the minds of money-lenders in Bombay, as echoed in the plaintiff's affidavit, that in all cases they can defeat the provisions of the Code as to payment by instalments and get a decree for immediate payment by avoiding the Small Causes Court and coming to this Court, is erroneous and needs to be corrected. POMA DONGRA *v.* WILLIAM GILLESPIE (1907).
I. L. R. 31 Bom. 348

——ss. 223, 229, 229B—

See EXECUTION OF DECREE.
I. L. R. 34 Calc. 576

——ss. 223, 258, 649—

See EXECUTION OF DECREE.
I. L. R. 30 Mad. 537

——s. 230—

See EXECUTION OF DECREE.
11 C. W. N. 440

—Execution of decree—Decree on appeal modifying the first decree.—A decree for payment of money was modified on appeal. *Held*, that the decree to be executed being the decree made on appeal, the twelve years mentioned in s. 230 of the Code of Civil Procedure would run from the date of the appellate decree. MAHOMED MEHDI BELLA *v.* MOHINI KANTA SAHA CHOWDHRY (1907) . **I. L. R. 34 Calc. 874**

——s. 232—

See STEP IN AID OF EXECUTION.
I. L. R. 20 Mad. 541

—Execution—Execution of money-decree—Transfer of the decree to one judgment-debtor—Execution of the decree by one judgment-debtor against his co-judgment-debtor allowed where the decree is passed against them as legal representatives of the deceased relations and against the property of the deceased—Direction in the decree that the personal liability of the judgment-debtors be determined in execution proceedings does not make the decree a money-decree.—*C* obtained a decree against *P* as the legal representative of *A* and against *S* as the legal representative of *L*. It directed, among other things, that *C* should recover Rs22,748 and costs from the property of *A* and *L*; that *C* was entitled to get back from the possession of *P* and *S* as heirs respectively of *A* and *L* all books of account, bonds and other papers belonging to *C*'s father; and that "it will be decided during the execution proceedings as to how far the heir defendants are personally liable in this

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

suit." *C* died after he had obtained this decree leaving *P* as his heir, to whom the decree was transferred by operation of law. *P* then applied for execution of the decree against *S*. The Subordinate Judge rejected the application on the ground that *P* was precluded by the proviso to s. 232 of the Civil Procedure Code from executing the decree against his co-judgment-debtor *S*. *Held*, (1) that there was nothing in the decree which saddled *P* and *S* with any personal liability to pay money, either jointly or severally; the amount of Rs. 22,748 and costs which was recoverable under the decree was made payable not by *P* and *S*, but out of the property of *A* and *L*; (2) that although by reason of the direction in the decree that the question of the personal liability of *P* and *S* should be determined in execution proceedings there might be subsequently, when that liability had been determined, a decree for money against them; until then it was a mere contingency, which would not make the decree as for money against *P* and *S*: (3) that therefore *P* was entitled to execute the decree against the estate of *L* in the hands of *S*. In s. 232 of the Civil Procedure Code (Act XIV of 1882) the phrase "a decree for money against several persons" means a personal decree for the payment of money by two or more defendants jointly. Clause (*b*) of the proviso to the section does not extend to a decree which may become a decree for money against several persons on determination by the Court. It applies only where in the decree there is a distinct order upon the defendants personally to pay the money. PANACHAND *v.* SUNDRABAI (1907).

I. L. R. 31 Bom. 308

——ss. 234, 244—

See HINDU LAW . **I. L. R. 34 Calc. 642**

—— s. 235 (g)—

See TRANSFER OF PROPERTY ACT.
I. L. R. 31 Bom. 244

——s. 244—

See APPEAL . **11 C. W. N. 239, 861**

——s. 244—

See LIMITATION ACT, SCH. II, ARTS. 95, 120 . . **I. L. R. 30 Mad. 402**

See OCCUPANCY HOLDING.
I. L. R. 34 Calc. 199

See REPRESENTATIVE. **11 C. W. N. 312**

See SALE IN EXECUTION OF DECREE.
11 C. W. N. 1011

—Rival decree-holders—Order distributing surplus proceeds of a putni sale—Appeal—Representative of judgment-debtor—Attaching creditor.—Where the surplus sale-proceeds of a *putni* sale having been attached by two judgment-creditors of the *putnidar* on different dates the District Judge made an order for the rateable distribution of the sale-proceeds amongst them, and one of them appealed against that order, the judgment-debtor himself remaining indifferent: *Held*, that no appeal lay, an attaching creditor of the judgment-debtor not being his representative within the meaning of s. 244, Civil Procedure Code. S. 244, Civil Procedure Code, does not apply when the question concerns two rival decree-holders. RAM CHUNDER *v.* HAMIRAN (1906)
11 C. W. N. 433

——s. 244 (c)—

See PRACTICE . **I. L. R. 31 Bom. 5**

——s. 244 (e)—

See EXECUTION OF DECREE.
I. L. R. 30 Mad. 26

——ss. 244, 278—

See EXECUTION OF DECREE.
I. L. R. 30 Mad. 215

——ss. 244, 278, 283—

—Appeal—Claim—Debutter property—Right of suit—Estoppel.—In execution of a decree obtained by the defendant against the plaintiff's father, the plaintiff as legal representative of his father preferred a claim to a property attached on the ground that it was not the personal property of his father but that it was *debutter* property; the claim being disallowed he preferred an appeal which was dismissed upon the defendant's objection that it was an order not under s. 244, Civil Procedure Code, but upon an application under s. 278. *Held*, that in a regular suit by the plaintiff for declaration that the property is *debutter* defendant is estopped from raising the question that it was barred by s. 244, Civil Procedure Code. HARA DHAN KALIA *v.* PURNA CHANDRA MONDAL (1906) . **11 C. W. N. 145**

——ss. 244, 291—

—Mortgage-decree—Sale—Stay—Right of auction-purchaser before confirmation of sale to deposit decretal amount and costs—Representative of judgment-debtor—Inchoate title—Right to redeem—Transfer of Property Act (IV of 1882), s. 91.—A first mortgagee obtained a decree on his mortgage in the presence of the second mortgagee. When he proceeded to sell the mortgaged properties, an auction purchaser of the properties at a sale held in execution of a decree obtained on the second mortgage—which sale, however, had not yet been confirmed by Court—deposited the decretal amount under s. 291, Civil Procedure Code, and prayed that the sale might be stopped. *Held*, that the auction-purchaser was a representative of the judgment-debtor, second mortgagee, within the meaning of s. 244, Civil Procedure Code, and he was entitled to make the deposit. *Ishan Chandra Sirkar* v. *Beni Madhub Sirkar*, *I. L. R. 24 Calc. 62*, followed. *Hara Sankar Prosad* v. *Shew Govind Shaw*, *4 C. W. N. 317*: *I. L. R. 27 Calc. 966*, referred to. RADHA KISEN MARWARI *v.* HEM CHANDRA BOSE (1907) . . . . **11 C. W. N. 495**

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——ss. 244, 291, 311—

See WAIVER. . . 11 C. W. N. 848

——ss. 244, 331—

See PARTIES. . I. L. R. 30 Mad. 72

——ss. 244, 310A—

—Appeal lies under s. 244 against an order rejecting an application under s. 310A by a transferee of judgment-debtor after Court sale.—The question of setting aside a sale in execution under s. 310A of the Code of Civil Procedure is a question relating to the execution of the decree within the meaning of s. 244 of the Code of Civil Procedure even when the proceeds of such sale are sufficient to satisfy the decree, and the auction-purchaser is a person other than the decree-holder. *Srinivasa Ayyangar* v. *Ayyathurai Pillai, I. L. R. 21 Mad. 416,* followed. The auction-purchaser at a Court sale is the representative of the decree-holder for the purposes of s. 244 of the Code of Civil Procedure. *Sandu Tarangar* v. *Hussain Sahib, I. L. R. 28 Mad. 87,* followed. *Bashir-ud-din* v. *Jhori Singh, I. L. R. 19 All. 140,* not followed. *Mammod* v. *Locke, I. L. R. 20 Mad. 487,* not followed. The transferee acquiring an interest in the property of the judgment-debtor after such property had been sold in execution, has a right to apply under s. 310A of the Code of Civil Procedure. *Huzari Ram* v. *Bodai Ram, 1 C. W. N. 279,* dissented from. *Erode Manikkoth Krishnan Nair* v. *Puttiedeth Chembakkoseri Krishnan Nair, I. L. R. 26 Mad. 365,* followed. An appeal lies under s. 244 of the Code of Civil Procedure against an order passed on an application by such transferee to set aside the sale under s. 310A. MANICKKA ODAYAN *v.* RAJAGOPALA PILLAI (1907) . I. L. R. 30 Mad. 507

——ss. 244, 318—

—Execution of decree—Procedure—Appeal—Dispute between two judgment-debtors as to right to property sold in execution.—In execution of a decree against *K* and *J* certain property of the judgment-debtors was sold, and was purchased by *G P* and this sale was confirmed. *G P* then applied under s. 318 of the Code of Civil Procedure asking that *J* might be substituted for the applicant and possession given to her. To this application *K* objected, on the ground that she, at some time prior to the execution of the decree and sale of the property, had given a certain sum of money to *J* and that *J* had misappropriated this money and had purchased with it the property which was sold in execution of the decree. *Held,* that no question was raised falling within the purview of s. 244 of the Code of Civil Procedure and no appeal would lie from the order allowing the auction purchaser's application under s. 318. KASTURA KUNWAR *v.* GAYA PRASAD (1906).
I. L. R. 29 All. 207

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——ss. 244, 583—

—Possession of property taken without intervention of Court—Decree reversed on appeal—Suit for restitution—Discretion of Court.—In a suit for redemption the plaintiff obtained a decree and took possession of the property in suit without the intervention of the Court. The decree, however, having been reversed on appeal, the defendant brought a regular suit to recover possession of the mortgaged property. *Held,* that a regular suit was precluded by the provisions of ss. 244 and 583 of the Code of Civil Procedure, but the Court of first instance would have exercised a proper discretion if it had treated the plaint as an application under s. 583 of the Code. *Dhan Kunwar* v. *Mahtab Singh, I. L. R. 22 All. 79,* and *Saran* v. *Bhagwan, I. L. R. 25 All. 441,* referred to. SHEODIHAL SAHU *v.* BHAWANI (1907)
I. L. R. 29 All. 348

——s. 253—

See LIMITATION ACT.
I. L. R. 31 Bom. 50

——s. 253—

—Decree—Execution—Stay of execution on furnishing security—Execution against surety—Surety's liability—Erroneous decision upon a point of law—Res judicata.—The execution of a decree passed in plaintiff's favour was stayed pending appeal by the defendant on his furnishing security. Afterwards the plaintiff having proceeded in execution against the defendant and the surety, the Court allowed the plaintiff's claim against the surety. In a subsequent execution proceeding the plaintiff having presented a *darkhast* for further execution against the surety, the Court passed an order allowing the claim. The order was confirmed in appeal. On second appeal by the surety: *Held,* dismissing the second appeal, that it was not open to the surety to re-open the question as to his liability, he having accepted the finding as to his liability in the prior execution proceeding and having abandoned the point in the lower appellate Court in the present proceeding. *Per Beaman, J.:*—An erroneous decision upon a point of law may yet as between the parties to it, but no further, be a sufficient *res judicata* to preclude them from re-agitating it. The conflict between *Lakshman* v. *Gopal, I. L. R. 30 Bom. 506,* and *Venkapa Naik* v. *Baslingapa, I. L. R. 12 Bom. 411,* indicated. WAMAN *v.* HARI (1906) . I. L. R. 31 Bom. 128

——s. 257A—

—Contract Act (IX of 1872), ss. 2, cl. (g), 23 and 124—Mortgage-bond—Consideration made up of several items—Decretal debt one of the items—Sanction of the Court not obtained—Effect on the bond.—N. G. sued to redeem a mortgage. The consideration for the mortgage consisted *inter alia* of an amount due under a decree. The decree did not provide for interest, whereas interest was chargeable on the decretal amount

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

included in the mortgage. The lower appellate Court held that as the agreement had not been sanctioned under s. 257A of the Civil Procedure Code (Act XIV of 1882) the whole mortgage bond was void. *Held*, reversing the decree of the lower Court, that though the provision in the mortgage bond regarding the decretal amount could not be enforced, the remaining provisions were good and enforceable at law. BHAGABAI *v.* NARAYAN (1907) I. L. R. 31 Bom. 552

——s. 258—

—*Judgment-creditor receiving payment and not certifying under s. 258 of the Code of Civil Procedure liable in damages though he has not executed and received the decree amount.*—The law casts on a decree-holder receiving payment out of Court the duty of certifying such payment in satisfaction of the decree under s. 258 of the Code of Civil Procedure. The judgment-debtor has a cause of action against the decree-holder, when the latter having received the decree amount not only does not certify, but actually takes out execution. It is not necessary that money should have been actually recovered in execution. *Viraraghava Reddi* v. *Subbakka, I. L. R. 5 Mad 357*, referred to. MEDAI KALIANI ANNI, *In the matter of* (1907). I. L. R. 30 Mad. 545

——s. 266—

See MARRIED WOMAN, PROPERTY OF. I. L. R. 30 Mad. 378

See MELWARAM. I. L. R. 30 Mad. 279

——ss. 278, 283—

See TITLE. . I. L. R. 34 Calc. 823

——ss. 284, 285—

See SALE IN EXECUTION OF DECREE. I. L. R. 34 Calc. 836

——ss. 290, 291, 244, 311, 312—

See EXECUTION OF DECREE. I. L. R. 29 All. 196

——s. 310A—

See UNDER-RAIYAT. 11 C. W. N. 742

——s. 310A—

—*Person acquiring interest in property after Court sale, within a month, can apply under s. 310A.*—Where property is sold in execution of a decree, a person acquiring an interest in such property from the judgment-debtor within a month after such sale, is entitled to maintain an application under s. 310A of the Code of Civil Procedure. *Hazari Ram* v. *Badai Ram and Nando Lal, 1 C. W. N. 279*, dissented from. APPAYA SHETTI *v.* KUNHATI PEARI (1906). I. L. R. 30 Mad. 214

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——ss. 310A, 244 (c)—

—*Execution of decree—Order refusing to accept a deposit tendered under s. 310A—Appeal.*—*Held*, that an order refusing to accept a deposit tendered under the provisions of s. 310A of the Code of Civil Procedure is an order falling within the purview of s. 244 (c) of the Code and is appealable as such. *Gulzari Lal* v. *Madho Ram, I. L. R. 26 All. 447*, and *Phul Chand Ram* v. *Nursingh Pershad Misser, I. L. R. 28 Calc. 73*, referred to. *Bashir-ud-din* v. *Jhori Singh, I. L. R. 19 All. 140*, not followed. IMTIAZI BEGAM *v.* DHUMAN BEGAM (1907) . . . . I. L. R. 29 All. 275

—— ss. 311, 312, 313—

—*Execution of decree—Sale in execution—Objection subsequently taken by the judgment-debtor that the property sold was not legally saleable—Estoppel.*—*Held*, that judgment-debtor who might have raised objections to a sale in execution of a decree against him, but who has refrained from doing so, and who might have appealed against the order for sale, has no right, after the sale has been carried out, to prefer an objection that the property sold was not legally saleable. *Ramchhaibar Misr* v. *Bechu Bhagat, I. L. R. 7 All. 641*, and *Durga Charan Mandal* v. *Kali Prasanna Sarkar, I. L. R. 26 Calc. 727*, followed. UMED *v.* JAS RAM (1907) . . . . I. L. R. 29 All. 612

——s. 316—

See ATTACHMENT OF DECREE. 11 C. W. N. 158

——s. 317—

—*Certified purchaser—Interpretation.*—The expression "certified purchaser" s. in 317 of the Civil Procedure Code (Act XIV of 1882) includes the person standing in the shoes of the Court purchaser. HARI GOVIND *v.* RAMCHANDRA (1906). I. L. R. 31 Bom. 61

——s. 317—

—*Joint decree—Purchase at sale in execution by one decree-holder—Suit for declaration that property purchased was joint.*—In execution of a joint decree on a mortgage one of the decree-holders obtained leave to bid at the auction sale and purchased the mortgaged property for the exact amount of the decree, namely, the mortgage debt, interest and costs. Satisfaction of the decree was entered up and a purchaser took possession of the property. *Held*, that s. 317 of the Code of Civil Procedure did not preclude the other joint decree-holder from suing for a declaration that the property so purchased was the joint property of himself and the actual purchaser. *Bodh Singh Doodhooria* v. *Ganesh Chunder Sen, 12 B. L. R. 317*, referred to. ACHHIBAR DUBE *v.* TAPASI DUBE (1907) . I. L. R. 29 All. 557

——s. 318—

See EXECUTION OF DECREE. I. L. R. 29 All. 463

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——ss. 320, 310A, 244—

—Execution of decree—Sale by Collector—Application to Court by judgment-debtor to set aside sale—Refusal by the Court—Appeal—Collector's power—Rules 16 and 17 of the Local Rules and Orders made under enactments applicable to Bombay.—A decree having been transferred to the Collector for execution under s. 320 of the Civil Procedure Code (Act XIV of 1882), he sold certain properties. Thereupon the judgment-debtor applied to the Court for the setting aside of the sale under s. 310A of the Code. The Court refused to set aside the sale on the ground that there was another decree-holder who had taken action under s. 295 of the Code, and that it was incumbent on the judgment-debtor to pay into Court a sum sufficient to answer his claim. On appeal by the judgment-debtor, the Judge dismissed the appeal on the ground that no appeal lay. *Held*, on second appeal by the judgment-debtor, that the order was appealable. An appeal lies from an order under s. 310A of the Code where the case falls under s. 244 (*c*). *Murlidhar* v. *Anandrao, I. L. R. 25 Bom. 418*, qualified. A question under s. 310A of the Code may be one relating to execution, discharge or satisfaction of the decree or to the stay of execution thereof. "When a question has arisen as to the execution, discharge, or satisfaction of a decree between the parties to the suit in which the decree was passed, the fact that the purchaser, who is no party to the suit, is interested in the result, has never been held a bar to the application of the section, *i.e.*, s. 244." *Prosunno Coomar Sanyal* v. *Kasi Das Sanyal, L. R. 19 I. A. 166*, applied. S. 310A of the Code applies even if the execution proceedings be referred to the Collector, who has no power to set aside a sale under the provisions of the Code. There is nothing in the section which precludes the Court from setting aside the sale merely because it had been confirmed. As s. 310A prescribes that the Court shall pass an order setting aside the sale whenever its provisions are complied with, the order refusing to set aside the sale reversed. PITA *v.* CHUNILAL (1906) . . . . **I. L. R. 31 Bom. 207**

——ss. 320, 325A—

—Ancestral property—Execution of decree—Property taken under management by the Collector—Disabilities of the proprietor pending term of management.—In pursuance of the power conferred upon him by rules framed by Government under s. 320 of the Code of Civil Procedure, the Collector sanctioned a lease of certain zamindari property of the judgment-debtor for a period of seventeen years, the lease being executed in the name of the judgment-debtor but with the permission of the Collector. *Held*, that the disabilities imposed by the first paragraph of s. 325A of the Code affected the judgment-debtor during the pendency of such leases; *semble*: that such disabilities continued so long as any of the debts for the satisfaction of which the judgment-debtor's property was taken under management by the Collector remained unpaid. GANGA PRASAD *v.* GANGA BAKHSH SINGH (1907) . . . . **I. L. R. 29 All. 415**

——s. 335—

—Dismissal for default—Limitation Act (XV of 1877), Sch. II, Art. 11.—An application under s. 335 of the Code of Civil Procedure was dismissed for default on the petitioner applying to withdraw his petition for want of evidence, the opposite party being present. In a suit by the petitioner for possession of the property, the subject of the above application, the defendants pleaded limitation under Art. 11 of Sch. II to the Limitation Act. *Held*, that there was no enquiry within the meaning of s. 335, and that consequently the order made was not conclusive and the suit was not barred by the special limitation of one year. It is a condition precedent to passing an order under s. 335, so as to make it conclusive unless a suit is brought within one year, that the Court shall enquire into the matters of resistance, etc. SARAT CHANDRA BISU *v.* TARINI PRASAD PAL CHOWDHRY . . . **I. L. R. 34 Calc. 491**

——s. 336—

—Insolvency—Security for filing application by judgment-debtor to be declared insolvent.—The petitioner gave security for one Aziz, who had been arrested in execution of a decree. He deposited a sum of money in Court on condition if an application which was to be made by Aziz within a time specified to be declared insolvent was rejected on any ground whatever, the amount deposited would be paid to the decree-holder. The judgment-debtor duly presented his application for a declaration of insolvency, but before any order could be passed on it he died. *Held*, that the condition of the security was not fulfilled, and the decree-holder was not entitled to the money deposited by the surety. *Krishnan Nayar* v. *Ittinan Nayar, I. L. R. 24 Mad. 637*, referred to. ASHIQ ALI *v.* MOTI LAL (1907) . . . . **I. L. R. 29 All. 466**

——s. 359—

See IMPRISONMENT, NATURE OF.
11 C. W. N. 740

——s. 362—

See LEGAL REPRESENTATIVE.
11 C. W. N. 186

——ss. 368, 582—

See APPEAL, ABATEMENT OF.
11 C. W. N. 504

——ss. 368, 582, 587—

—Act No. XV of 1877 (Indian Limitation Act), Sch. II, Art. 175C—Application to bring on to the record the heirs of a deceased respondent—Limitation.—*Held*, that Art. 175C of the secon schedule to the Indian Limitation Act applies as we

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

to appeals from appellate decrees as to appeals from original decrees, *Suya Pillai* v. *Aiyakannu Pillai, I. L. R. 29 Mad. 529*, dissented from. *Vakkalagadda Narasimham* v. *Vahizulla Sahib, I. L. R. 28 Mad. 498*, followed. MADHUBAN DAS *v.* NARAIN DAS (1907) . . I. L. R. 29 All. 535

—— s. 372—

See COMPROMISE.
I. L. R. 30 Mad.

See PLAINTIFF, SUBSTITUTION OF.
I. L. R. 34 Calc. 612

——s. 375—

—Consent decree—Status of landlord and tenant—Forfeiture clause—Suit to enforce forfeiture—Relief against forfeiture.—When a plaintiff is seeking to enforce by original suit a right to forfeiture contained in a consent decree (passed under s. 375 of the Civil Procedure Code in accordance with a lawful agreement recorded under that section), whereby the status of landlord and tenant is established between the plaintiff and defendant, the Court in the exercise of its equitable jurisdiction is not precluded from granting such relief against forfeiture as it might have granted, had the status arisen from contract or custom. *Per* JENKINS, *C.J.*—As under s. 375 of the Civil Procedure Code (Act XIV of 1882) the decree was to be in accordance with the agreement, it cannot have altered the relations of the parties as they existed under the agreement. And as it was an incident of those relations that the right of forfeiture was subject to relief, that incident must still apply when those relations are established by a decree passed in accordance with the agreement. *Per* BEAMAN, *J.*—The difference between a consent decree declaring the agreement of parties, and the agreement of parties themselves, when the one or the other is sought to be afterwards enforced, goes no further than this, that in the former case it would not be open to a party to question the accuracy of the decree, as expressing what at the time was the contract which had been made. *Shirekuli Timapa Hegda* v. *Mahablya, I. L. R. 10 Bom. 435*, dissented from. KRISHNABAI *v.* HARI GOVIND (1906) . . I. L. R. 31 Bom. 15

—— s. 375—

—"Lawful agreement or compromise"—"Relates to the suit"—Compromise in a suit for money by which the agreed amount is charged on property is lawful and the relief by way of charge "relates to the suit."—The language of s. 375 of the Code of Civil Procedure is wide and general and does not preclude parties from setting their disputes on such lawful terms as they might agree to without being restricted to such relief as one only of the parties had chosen to claim in the plaint. In a suit for money, where the plaint prays for a simple money decree, an agreement, by which the parties agree that the amount decreed according to the compromise should be a charge on certain properties, is "lawful" and "relates to the suit" so as to be embodied in the decree. JOTI KURUVETAPPA *v.* IZARI SIRUSAPPA (1907) I. L. R. 30 Mad. 478

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——s. 396—

—Partition—Commission to make partition—Issue of commission to one person only.—A Court issuing under s. 396 of the Code of Civil Procedure a commission to make partition of immovable property not paying revenue to Government cannot legally issue such commission to one commissioner only. *Per* RICHARDS, *J.*—But there is nothing to prevent the parties to partition proceedings agreeing that one commissioner only should be appointed; nor does it follow that all the partitions that have been made are invalid by reason of the fact that only one commissioner has been appointed. MULCHAND *v.* MUHAMMAD ALI KHAN (1906).
I. L. R. 29 All. 235

——s. 411—

—Suit in formâ pauperis—Court fee—Property of defendant sold to realize court-fee—Property sold subject to a mortgage—Rights of mortgagee.—Held, that the sale subject to a mortgage of property belonging to the defendant in suit brought *in formâ pauperis* for the purpose of realizing the court-fee payable to Government by the plaintiff, does not preclude the mortgagee from bringing to sale the same property in execution of a decree for sale as his mortgage. *The Collector of Moradabad* v. *Muhammad Daim Khan, I. L. R. 2 All. 196*, overruled. *Ganpat Putaya* v. *The Collector of Kanara, I. L. R. 1 Bom. 7*, distinguished. DOST MUHAMMAD KHAN *v.* MANI RAM (1907).
I. L. R. 29 All. 537

——ss. 411, 412—

—Plaintiff permitted to sue as a pauper—Compromise—Withdrawal by plaintiff without permission—Success—Failure.—If a plaintiff, who has been permitted to sue as a pauper, withdraw from the suit without permission under s. 373 of the Civil Procedure Code (Act XIV of 1882) as the result of a compromise by which he obtained a substantial part of the relief claimed, he does not succeed in the suit within the meaning of s. 411 but he fails in the suit within the meaning of s. 412 of the Civil Procedure Code. SECRETARY OF STATE *v.* BHAGIRATHIBAI (1906).
I. L. R. 31 Bom. 10

—— s. 424—

—Suit against public officer—Suit to recover articles seized by police during a search.—The plaintiff sued to recover from the defendant three account books which he alleged that the defendant, a Sub-Inspector of Police, had seized during a search, apparently in pursuance of the provisions of s. 165 of the Code of Civil Procedure, of the plaintiff's house. *Held,* that the defend-

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

ant, if he seized the books, which was denied, did so in his capacity as a police officer and that the suit was not maintainable in the absence of the notice prescribed by s. 424 of the Code of Civil Procedure. *Muhammad Saddiq Ahmad* v. *Panna Lal, I. L. R. 26 All. 220*, distinguished. *Jogendra Nath Roy Bahadur* v. *Price, I. L. R. 24 Calc. 584*, referred to. BAKHTAWAR MAL *v.* ABDUL LATIF (1907) . . . . I. L. R. 29 All. 567

——s. 433—

—Suit against a ruling chief—Permission to sue granted in absence of the necessary conditions precedent—Jurisdiction.—A suit for the recovery of arrears of salary was brought in the Court of the Subordinate Judge of Agra against the Maharaja of Jaipur. The plaintiff obtained the consent of the Governor General in Council to the institution of the suit, granted ostensibly in accordance with the provisions of s. 433 of the Code of Civil Procedure; but in fact none of the conditions enumerated in cl. (2) of the section existed. *Held*, that the suit was not maintainable. MAHARAJA OF JAIPUR *v.* LALJI SAHAI (1907).
I. L. R. 29 All. 379

——s. 440—

—Guardian of minor "appointed by an authority competent in this behalf," meaning of—Powers of a Hindu father to appoint a testamentary guardian to his minor son—Indian Succession Act, s. 47, not applicable to the will of a Hindu.—Assuming that a Hindu father has power to appoint a testamentary guardian, it is not by virtue of any statute; for s. 47 of the Indian Succession Act does not apply to the will of a Hindu. If, therefore, the power exists it must be under Hindu Law as distinct from statute. It would not be in accordance with the ordinary use of language to speak of a father, whose power (if any) rests on the General Hindu Law as "an authority competent in that behalf." It is clear that s. 440 of the Civil Procedure Code does not apply to all guardians, for it would be impossible to suggest that it applies to natural guardians. BUDHILAL *v.* MORARJI (1907).
I. L. R. 31 Bom. 413

——s. 443—

—Guardian ad litem—Appointment of guardian ad litem other than certificated guardian.—Held, that the appointment, apparently by an oversight, as guardian *ad litem* to a minor defendant of a person other than the certificated guardian amounted to no more than an irregularity and would not of itself vitiate either a decree passed in a suit or a sale consequent upon such decree. DAMMAR SINGH *v.* PIRBHU SINGH (1907).
I. L. R. 29 All. 290

——s. 444—

See GUARDIAN AD LITEM.
I. L. R. 29 All. 675

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——s. 457—

See GUARDIAN AD LITEM.
I. L. R. 29 All. 728

——ss. 492, 493—

See INJUNCTION.
I. L. R. 34 Calc. 97, 101

—— ss. 503, 505—

See RECEIVER . I. L. R. 34 Calc. 305

—— s. 506—

See ARBITRATION I. L. R. 29 All. 423; 11 C. W. N. 1152

—Arbitration—Authority of pleader to agree to reference.—A vakalatnamah in general terms is wholly insufficient to enable a pleader to apply for an order of reference to arbitration on behalf of his client under s. 506 of the Code of Civil Procedure. Where, however, a reference was made on such authority and an award followed and a decree based on such award without any objection taken to the authority of the pleader to apply for a reference, the High Court refused to set aside such decree in revision. RAMJIAWAN RAM *v.* KALI CHARAN SINGH (1907) . I. L. R. 29 All. 429

——ss. 521, 522—

See ARBITRATION—AWARD.
I. L. R. 29 All. 426

——ss. 521, 522—

See APPEAL. . I. L. R. 29 All. 457

—Arbitration—Award—Decree on award made without allowing time to file objections—Appeal.—An appeal will lie from a decree passed in accordance with an award if such decree has been passed without allowing to the parties the time prescribed by law for filing objections to the award. *Ibrahim Ali* v. *Mohsin Ali, I. L. R. 18 All. 422*, and *Maharajah Joymungul Singh Bahadur* v. *Mohun Ram Marwaree, 23 W. R. 429*, followed. NAJM-UD-DIN AHMAD *v.* PUECH (1907).
I. L. R. 29 All. 584

——s. 527—

—Case stated under Indian Succession Act (X of 1865), s. 78—Will—Appointment by general bequest—Power created subsequently to the will.—A general power of appointment may be well exercised by a will executed previously to the creation of the power and that too by a mere residuary gift. DINSHAW SORABJI *v.* DINSHAW SORABJI (1907) . I. L. R. 31 Bom. 472

——s. 539—

—Applicability of section—Suit brought by the whole body of persons authorized to administer the trust.—Held that s. 539 of the Code of Civil Procedure does not apply to a case where the suit is instituted by the whole body of

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

persons who are legally authorized to administer the trust to which it relates. *Rai Budree Das Mukim Bahadur* v. *Chuni Lal Johurry, 10 C. W. N. 581,* followed. RAM DAS *v.* BADRI NARAIN (1906).
I. L. R. 29 All. 27

——s. 542—

See LIMITATION, PLEA OF.
I. L. R. 34 Calc. 941

——s. 544—

—Ground common to all the defendants —Decree against all defendants may be reversed on appeal by one against the whole decree, when such decree has proceeded on a ground common to all.—When the decree of the lower Court proceeds on a ground common to all the defendants, the Appellate Court, under s. 544 of the Code of Civil Procedure, may, on appeal by one of the defendants against the whole decree, reverse the decree in so far as it affects other defendants though they have not joined in the appeal. It is enough if any one ground on which the decree appealed against proceeds is common to all the defendants. *Syed Hussain* v. *Madhan Khan, I. L. R. 17 Mad. 265,* overruled. *Seshadri* v. *Krishnan, I. L. R. 8 Mad. 192,* approved. DHUTTALOOR SUBBAYYA *v.* PAIDIGANTAM SUBBAYYA (1907).
I. L. R. 30 Mad. 740

——s. 546, para. 3—

See EXECUTION OF DECREE.
I. L. R. 34 Calc. 1037

——ss. 556, 558—

See DISMISSAL FOR DEFAULT.
I. L. R. 34 Calc. 403

——ss. 561, 566—

See REMAND . **I. L. R. 34 Calc. 996**

——s. 562—

See APPEAL . **I. L. R. 29 All. 659**

——ss. 562, 578—

See REMAND, ORDER FOR.
11 C. W. N. 380

——s. 566—

—Remand - Return to remand to be made by the Court originally seised of the case— Jurisdiction.—Held, that when issues are remitted for trial under s. 566 of the Code of Civil Procedure, such issues are triable only by the Court which was originally seised of the case. The principle of *Sabri* v. *Ganeshi, I. L. R. 14 All. 23,* followed. ALI SHER KHAN *v.* AHMAD-ULLAH KHAN (1907) . . . **I. L. R. 29 All. 660**

——ss. 568, 623—

—Discovery of fresh evidence—Laches—Negligence—Dismissal of application for review— Additional evidence on appeal—Evidence taken preliminary to hearing of appeal on the merits— Suit for damages for injuries on railway— Appeal decided not on evidence at trial but on observations of Judges at presentation of scene and events of accident on another night than that on which accident occurred.—The legitimate occasion for s. 568 of the Civil Procedure Code (XIV of 1882) is when on examining the evidence as it stands some inherent lacuna or defect becomes apparent, and not where a discovery is made outside the Court of fresh evidence and the application is made to import it: that is the subject of the separate enactment in s. 623. S. 623 exacts very strict conditions, so as to prevent litigants being negligent, and enjoins the Court to require the facts as to the absence of negligence to be strictly proved. Where the defendants on the day after judgment had been given against them discovered fresh evidence which with diligence they might under the circumstances have obtained before or during the trial of the suit, and even after such discovery delayed for two weeks before making an application for review of judgment: *Held,* that the application was rightly dismissed. On an appeal on the merits of the case being filed the Appellate Court without recording any reason as required by s. 568 of the Code allowed such further evidence to be taken, not after the appeal on the merits had been heard and the evidence as it stood had been examined by the Judges, but on special and preliminary application: *Held,* that the Appellate Court had no jurisdiction to admit the additional evidence, that it was wrongly admitted and must be disregarded. The plaintiff sued the defendants, a Railway Company, for damages for injuries sustained by him when alighting from a carriage which overshot the platform of a station at night, and the evidence on the question of what light there was either natural or artificial, on the night in question being conflicting, it was suggested during the hearing of the case on appeal and agreed to by the counsel for the parties that the Judges should visit the scene of the accident under conditions approximating as nearly as possible to those which prevailed when the plaintiff met with his injuries. This was done, and the Judges and the legal advisers of the parties went to the station where a presentation of the scene and events of the accident was gone through by which the Judges were enabled to make a thorough investigation of the material conditions accompanying the accident. They formed their own opinion on the question of the sufficiency or otherwise of the light and gave judgment in accordance with them, reversing the decision of the Court which tried the case: *Held,* that such procedure was illegal. The result of it was that the appeal was decided not on the testimony given at the trial as to what took place on the night of the accident, but by the Judges' observation of what they saw on another night altogether; and the decision based on it was set aside, the judgment of the first Court being restored KESSOWJI ISSUR *v.* GREAT INDIAN PENINSULA RAILWAY COMPANY (1907).
I. L. R. 31 Bom. 381: L. R. 34 I. A. 115

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——s. 578 -

See PRACTICE . I. L. R. 34 Calc. 396

— s. 578—

—Irregularity—Disposal of a suit on a Sunday.—Held, that the disposing of a civil suit on a Sunday is a mere irregularity which is covered by the provisions of s. 578 of the Code of Civil Procedure. *Ram Das Chakarbati* v. *The Official Liquidator, Cotton Ginning Company, Limited, Cawnpore, I. L. R. 9 All. 366,* and *Ununto Ram Chatterjee* v. *Protab Chunder Shiromonee, 16 W. R., Cr., 230,* referred to. SHEO RAM TIWARI *v.* THAKOR PRASAD (1907).
I. L. R. 29 All. 562

——ss. 582, 587—

See LIMITATION.
I. L. R. 34 Calc. 1020

——s. 583—

—Execution of decree—Restitution of property sold in execution of a decree afterwards reversed in appeal—Procedure.—In a suit for a declaration that certain property belonged to the defendant judgment-debtor the plaintiff decree-holder obtained a decree and proceeded on the strength thereof to sell the property. In appeal, however, this decree was reversed. The rightful owner of the property sold then applied to the Court for restitution of the property. *Held,* that whether the application could or could not be considered as one falling strictly within the terms of s. 583 of the Code of Civil Procedure, the applicant was entitled to restitution. *Radhe Singh* v. *Mangni Ram, 6 C. W. N. 710,* referred to. SHIAM SUNDAR LAL *v.* KAISAR ZAMANI BEGAM (1906).
I. L. R. 29 All. 143

——s. 584—

See SECOND APPEAL.
11 C. W. N. 83, 1028

——s. 586—

See SECOND APPEAL.
I. L. R. 30 Mad. 212

—No second appeal where unnecessary prayer for declaration in suit of Small Cause nature.—When all the reliefs which the plaintiff claims in a suit could have been obtained without asking for a declaration, the addition of a prayer for a declaration will not prevent the suit from being of the nature cognisable by a Court of Small Causes within the meaning of s. 586 of the Code of Civil Procedure if without such declaration it is so cognisable RAMACHENDRAIYAR *v.* NOORULLA SAHIB (1906).
I. L. R. 30 Mad. 101

——ss. 586, 588—

See REMAND, ORDER OF.
11 C. W. N. 862

——s. 596—

See APPEAL TO PRIVY COUNCIL.
I. L. R. 34 Calc. 400

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*concluded.*

——s. 602—

See APPEAL TO PRIVY COUNCIL.
11 C. W. N. 1104

——s. 622—

See DISTRICT REGISTRAR.
I. L. R. 30 Mad. 326

See PRESIDENCY SMALL CAUSE COURT ACT.
I. L. R. 31 Bom. 138

— ss. 622, 623, 626, 629—

See REVISION. . I. L. R. 29 All. 468

——s. 646B—

See JURISDICTION.
I. L. R. 30 Mad. 41

——s. 647—

—Criminal Procedure Code, s. 195.—S. 647 of the Code of Civil Procedure does not make the provisions of the Code of Civil Procedure applicable to proceedings under s. 195 of the Code of Criminal Procedure. RAMA AYYAR *v.* VENKATACHELLA PADAYACHI (1907).
I. L. R. 30 Mad. 311

——provisions of—

See LIS PENDENS.
I. L. R. 31 Bom. 393

CIVIL AND REVENUE COURTS.

See NORTH-WESTERN PROVINCES ACT (II of 1901), s. 32.
I. L. R. 29 All. 66

See PARTITION. I. L. R. 29 All. 604

COGNIZANCE OF OFFENCE.

—Appellate Court can itself try the offender —Cognizance in such cases under s. 190 (b) and not 190 (c)—S. 423 (1) (b) of the Code of Criminal Procedure ought to be read with s. 528 of the Code.—The provisions of s. 423 (1) (*b*) do not preclude an Appellate Court, when it reverses the finding and sentence under appeal, from trying the offender itself, if the offence is one ordinarily triable by it. In such cases the Appellate Court takes cognizance under s. 190 (*b*) and not s. 190 (*c*). EMPEROR *v.* MANIKKA GRAMANI (1906).
I. L. R. 30 Mad. 228

CO-HEIR.

——liability of—

See CONTRIBUTION.
I. L. R. 30 Mad. 526

"COIN."

—Penal Code (Act XLV of 1860), s. 230 —Ulterior false coin—Cheating.—A gold mohar of the reign of Shahjahan cannot be deemed to be

"COIN"—*concluded.*

"coin" within the meaning of s. 230 of the Indian Penal Code, as it is not used for the time being as money. *Regina* v. *Bapu Yadav, 11 Bom. H. C. 172,* followed. *Queen* v. *Kunj Beharee, 5 All. H. C. 182,* distinguished. EMPEROR *v.* KHUSHALI (1906) . . . . I. L. R. 29 All. 141

COINAGE AND PAPER CURRENCY ACT (XXII OF 1899).

——ss. 2, 3—

See LEGAL TENDER.
I. L. R. 34 Calc. 305

COLLECTOR.

See MÁMLATDÁRS' COURTS ACT.
I. L. R. 31 Bom. 86

COLLECTOR OF CUSTOMS.

——power of—

—Counterfeit trade-mark—False trade description—Sea Customs Act (VII of 1878), ss. 18, 19A—Merchandise Marks Act (IV of 1889), ss. 10, 11—Indian Penal Code (Act XLV of 1860), ss. 28, 480.—It is the duty of the Collector of Customs as representing the Government to stop from being brought into British India, goods coming within the specification mentioned in s. 18 of the Sea Customs Act, 1878, as amended by the Merchandise Marks Act, 1889, *inter alia* goods having applied thereto a counterfeit trade-mark within the meaning of the Indian Penal Code, or a false trade-description within the meaning of the Indian Merchandise Marks Act, 1889. The Collector has power to detain such goods although no regulations have been framed by the Governor-General in Council under s. 19A(2) of the Sea Customs Act, 1878, as amended by the Merchandise Marks Act, 1889. NEMI CHAND *v.* SECRETARY OF STATE FOR INDIA.
I. L. R. 34 Calc. 511

COLLECTOR OF THE 24-PARGANAS.

—Public Demands Recovery Act (Beng. I of 1895)—Sale of immoveable property—Certificate Officer.—The Collector of the 24-Parganas is *ex-officio* Collector of Calcutta. He may, in his capacity of Certificate Officer, sell immoveable property in Calcutta, under the Public Demands Recovery Act (Beng. I of 1895). HARI CHARAN SINGH *v.* CHANDRA KUMAR DEY (1907).
I. L. R. 34 Calc. 787

COLLISION.

See ACCIDENT.

—Railways Act (IX of 1890), s. 101—Negligence—Omission to take down line-clear signal.—Where in consequence of the omission of a Station Master to take down the line-clear signal, a mixed train was run into the station and a collision took place in which one waggon was derailed, but as the train was moving slowly no person was injured: *Held,* that the omission on the part of the Station Master constituted an offence under s. 101 of the Indian Railways Act. *The Queen* v. *Manphool, 5 All. H. C. 240 (Ry. Cas. 710),* distinguished. JOY GOPAL BANERJEE *v.* EMPEROR (1906)
11 C. W. N. 173

COLLISION—*concluded.*

COLOURABLE IMITATION.

See TRADE-MARK. I. L. R. 34 Calc. 495

COMMISSION OF PARTITION.

See CIVIL PROCEDURE CODE, s. 396.
I. L. R. 29 All. 235

See PARTITION.

COMMISSIONER, POWER OF.

See SALE FOR ARREARS OF REVENUE.
I. L. R. 34 Calc. 677

COMMISSIONER FOR EXAMINING WITNESS.

See SANCTION FOR PROSECUTION.
11 C. W. N. 909

COMMISSIONER OF POLICE.

See BOMBAY CITY POLICE ACT.
I. L. R. 31 Bom. 480

COMMITMENT.

See PARDON, WITHDRAWAL OF.
I. L. R. 29 All. 24

COMMON MANAGER.

——appointment of—

See SALE FOR ARREARS OF REVENUE.
I. L. R. 34 Calc. 381

—Bengal Tenancy Act (VIII of 1885), ss. 93, 94—Separate appointment for separate estates or groups of estates belonging to same co-owners—District Judge may reconsider question of necessity of appointment at any stage—Discretion, judicial—Position of co-owner who has separated his share but not by metes and bounds.—Where a District Judge made an order for the appointment of a common manager in respect of several revenue-paying and revenue-free estates of which the co-owners were not the same: *Held,* that the District Judge should have separately considered each property or group of properties belonging to

COMMON MANAGER—*concluded.*

the same co-owners and made separate appointments in regard to each property or group, though the same common manager might be appointed in all the cases. *Fazlal Ali Chowdhury* v. *Abdul Majid Chowdhury*, *I. L. R. 14 Calc. 659*, followed. Where on being directed to deal with the case in the above manner, the District Judge instead of starting proceedings *de novo* and issuing notices on the co-owners under s. 93, Bengal Tenancy Act, to show cause why a common manager should not be appointed, issued notices under s. 94 of the Act asking them to appoint a common manager: *Held*, that, in the circumstances of the case, the proceedings should have been commenced *de novo* and the co-owners given an opportunity of showing that owing to the altered state of things there was no longer any necessity for appointing a common manager. A District Judge can in the exercise of his discretion consider the propriety of the appointment of a common manager whatever be the stage at which the proceedings may have arrived. This discretion is not, however, to be exercised arbitrarily but according to well established rules. A co-owner who has opened a separate account in the Collector's register or makes separate collection for his share is nevertheless liable to have his share taken over by a common manager, although the dispute may not have extended to his share. His remedy, if any, is to have his share demarcated by metes and bounds. SARADINDU ROY *v.* THE COLLECTOR OF RUNGPUR (1907).

11 C. W. N. 1143

COMPANIES ACT (VI of 1882).

——s. 136—

See EXECUTION OF DECREE AGAINST COMPANY IN LIQUIDATION.

I. L. R. 30 Mad. 533

——ss. 177, 185—

See LIQUIDATORS . **I. L. R. 30 Mad. 22**

——ss. 169, 177, 185, 189, 191—

See APPEAL, RIGHT OF.

I. L. R. 30 Mad. 22

COMPANIES, SHARES IN.

See MAHOMEDAN LAW—GIFT.

L. R. 34 I. A. 167

COMPENSATION.

See ADVOCATE. . **I. L. R. 34 Calc. 729**

See DAMAGES, SUIT FOR.

I. L. R. 34 Calc. 470

1.—*Land Acquisition Act (I of 1894), ss. 18, 20, 21—Apportionment—Reference to Court—Objection taken before Court by party who had raised no objection before Collector.*—In a proceeding under the Land Acquisition Act, a party who had raised no objection to the apportionment of compensation made by the Collector must be taken to have accepted the award in that respect under ss. 18, 20 and 21 of the Land Acquisition Act, all that the Court can deal with is the objection which has been referred to it; it cannot go into a question raised for the first time by a party who have not referred any question or raised any objection to it under s. 18 of the Act. ABU BAKAR *v.* PEARY MOHAN MUKERJEE (1907) . . . . **I. L. R. 34 Calc. 451**

COMPENSATION—*concluded.*

2.—*Land Acquisition Act (I of 1894), ss. 11, 23—Market value—Bases of its calculation—Speculative advance in prices—Recent instances of sale—Rental of lands in the vicinity—General demand for land—Onus probandi.*—Profit from the most advantageous disposition of land is one test for determining its market price. The probable use of land in the most advantageous way in accordance with the use already made of neighbouring lands leads to speculative advance in prices to which regard should be paid. The utility of land is an element for consideration in estimating its value, that is, the utility which may be calculated by a prudent businessman. *Premchand Burral* v. *Collector of Calcutta*, *I. L. R. 2 Calc. 103*; *Hooghly Mills Company* v. *Secretary of State*, unreported; *Secretary of State for Foreign Affairs* v. *Charlesworth Pilling & Co.*, *L. R. 28 I. A. 121*; *Rajendra Nath Banerjee* v. *Secretary of State*, *I. L. R. 32 Calc. 343*, referred to. The market value of the acquired lands is also to be ascertained from recent instances of sales in the same or in the adjoining localities, and from the average rental of these and similar lands in the vicinity. S. 21 of the Act authorizes the Judge to confine his inquiry into valuation to the interests of persons affected by the Collector's reference, but the section must mean the admitted interests. If there is any dispute as to the relative value of such interests, the Judge should determine the total amount payable for the land leaving the question of apportionment to be decided in a separate proceeding. The general demand for land, and the consequent reflex action on the prices of all classes of lands, is a factor in the calculation of the market value of lands under acquisition. The *onus probandi* varies according to the probative value of Collector's inquiry under s. 11 of the Act, and if he makes no inquiry or gives no reasons for his valuation, the *onus* on the claimant is nominal, and the Special Judge must decide on the weight of evidence. FINK *v.* SECRETARY OF STATE FOR INDIA (1907).

I. L. R. 34 Calc. 599

COMPENSATION, APPORTIONMENT OF.

See RES JUDICATA.

I. L. R. 34 Calc. 466

COMPLAINT.

See CRIMINAL PROCEDURE CODE, s. 203.

I. L. R. 29 All. 7

COMPLAINT—*concluded.*

——frivolous or vexatious—

See CRIMINAL PROCEDURE CODE, s. 250.
I. L. R. 29 All. 137

—*Criminal Procedure Code (Act V of 1898), ss. 200, 202—Complaint by Government pleader—Judicial inquiry—Cognisance—Jurisdiction.*—On the complaint of a person who had no personal knowledge of the matter complained of, a judicial inquiry was directed and on the report thereof proceedings were taken. *Held*, that there was no complaint under s. 200, Criminal Procedure Code, properly so called on which a judicial inquiry could be directed. The proceedings were quashed. CHAMROO SAHU *v.* EMPEROR (1906) . 11 C. W. N. 170

COMPOUND INTEREST.

—*Mortgage bond—Stipulations in bonds amount to penalties—Compound interest—Increased interest on default—Compensation for breach of contract—Interest after date fixed for payment, power to give—Interest at contract rate after such date.*—Compound interest at a rate exceeding the rate of interest on the principal money, being in excess of and outside the ordinary and usual stipulation, may be regarded as in the nature of a penalty. Where a stipulation in a mortgage bond for increased interest on default is retrospective and the increased interest runs from the date of the bond, and not merely from the date of the default, it is always to be construed as a penalty, because an additional money payment becomes in that case immediately payable by the mortgagor. But the increased interest is not therefore to be disallowed altogether; for by s. 74 of the Contract Act reasonable compensation not exceeding the amount of the penalty is to be received by the party complaining of the breach of the contract. Where two mortgage bonds were executed each providing for interest, compound interest, and on default increased interest from the respective dates of the execution of the bonds, and on the date of the execution of the second bond the amount due on the first bond with interest was included in the principal of the second bond; the High Court in a decree on the bonds held that the increased interest by way of compensation on the first bond should run only from the date of execution of the second bond, and that on the second bond should run only from the date of default on that bond, and allowed compound interest at the same rate only as that at which simple interest was stipulated for in the bond, and the Judicial Committee affirmed that decree. Ss. 86 and 88 of the Transfer of Property Act contain no directions for interest beyond the date to be fixed by the Court up to which the account is directed to be taken; but it has long been the uniform practice of the Calcutta High Court to give such interest, and the power to do so, whatever the source of it (and that is immaterial since the decision in *Maharaja of Bharatpur* v. *Kanno Dei, L. R. 28 I. A. 85; I. L. R. 23 All. 181*), must be considered as established. SUNDAR KOER *v.* RAI SHAM KRISHEN (1906). I. L. R. 34 Calc. 150; L. R. 34 I. A. 9

COMPROMISE.

See CIVIL PROCEDURE CODE.
I. L. R. 31 Bom. 10

See CIVIL PROCEDURE CODE, s. 375.
I. L. R. 30 Mad. 478

See HINDU LAW—WILL.
I. L. R. 29 All. 451

See LANDLORD AND TENANT.
I. L. R. 34 Calc. 456

See PARTIES. . I. L. R. 30 Mad. 72

See SURETY. . I. L. R. 29 All. 627

——decree—

See MINOR. . I. L. R. 34 Calc. 83

——deed of—

See EXCHANGE. . 11 C. W. N. 342

1.—*Compromise-suit—Compromise of suit made by adult male members of joint family—Minors—Repudiation.*—In this case the appellant sued to set aside a compromise and decree in accordance therewith in a former suit, which had been made on his behalf by the adult members of a joint family, of which he was an infant member, and for other reliefs. The High Court held that under the circumstances the compromise was valid and binding, and on appeal the Judicial Committee were of opinion that he could not obtain the other relief prayed for without first setting aside the compromise, and held that there were no grounds for setting it aside. The Court had partly heard the suit before the compromise was entered into; the appellant had no separate interest; the adult male members of the family, who were presumably competent to judge of their own interests, had taken part in the compromise and assented to it; and the Court pronounced that it was for the benefit of the appellant, who had been made a party for the purpose of binding his interest. RAMESWAR PERSHAD SINGH *v.* RAM PAHADUR SINGH (1906) . . . I. L. R. 34 Calc. 70

2.—*Civil Procedure Code, s. 375—Incorporation in compromise decree of terms which are not unlawful, though outside the scope of suit cannot be objected to in execution.*—Where a compromise between the parties to a suit embraces matters not relating to the suit, and the decree following such compromise gives reliefs which are not unlawful, but which could not have been given if the suit had been decided after trial, any objection to such decree on the ground that it is in contravention of s. 375 of the Code of Civil Procedure, must be taken by way of appeal and not in execution of the decree. *Venkatappa Nayanim* v. *Thimma Nayanim, I. L. R. 18 Mad. 410*, referred to. *Mahibulla* v. *Imami, I. L. R. 9 All. 229*, referred to. *Kuruvetappa* v. *Sirasappa, 16 M. L. J. 354*, referred to. MANAGER OF SRI MEENAKSHI DEVASTANAM, MADURA *v.* ABDUL KASIM SAHIB (1907) . . . . I. L. R. 30 Mad. 421

COMPROMISE—*concluded.*

3.—*Hindu Law—Compromise entered into by a Hindu female, effect of.—Held,* that a compromise made by a person holding a Hindu widow's or Hindu daughter's estate in the property of her deceased husband or father, is not binding on the reversioners, even though it has been followed by a decree of Court, nor is a decree on an arbitration award, one of the parties to the submission having been a Hindu widow, or daughter; but the reversioners can only be bound by a decree made after full contest in a *bonâ fide* litigation. *Imrit Konwur* v. *Roop Narain Singh, 6 C. L. R. 76; Sheo Narain Singh* v. *Khurgo Koerry, 10 C. L. R. 337; Jeram Laljee* v. *Veerbai, 5 Bom. L. R. 885; Sant Kumar* v. *Deo Saran, I. L. R. 8 All. 365; Ram Sarup* v. *Ram Dei, Weekly Notes, 1907, 33;* and *Stapilton* v. *Stapilton, 1 White and Tudor 230,* referred to. GOBIND KRISHNA NARAIN *v.* KHUNNI LAL (1907). **I. L. R. 29 All. 487**

COMPROMISE DECREE.

See JUDGMENT-DEBTOR. **I. L. R. 30 Mad. 72**

See MINOR.

CONFESSION.

Col.
1. CONFESSION TO PUNCHAYET. . . 83
2. CONFESSION RETRACTED. . . 83

CONFESSION.

1. CONFESSION TO PUNCHAYET.

1.—*Punchayet—Evidence Act (I of 1872), s. 24—Confession before punchayet—Punchayet if police-officer or a person in authority—Sentence—Age of the accused.*—A *punchayet* is not a police-officer but he is a person in authority within the meaning of s. 24 of the Indian Evidence Act. A confession made by an accused before the *punchayet* who only told the accused to speak the truth, is admissible in evidence. Where the accused, a girl of 16, was held guilty of deliberately killing her husband by means of arsenic poison which she mixed up with the food, cooked and served up by herself to the husband: *Held,* that in consideration of her age she should be transported for life instead of suffering the extreme penalty of death. EMPEROR *v.* JASHA BEWA (1907) . . **11 C. W. N. 904**

2. CONFESSION RETRACTED.

2.—*Evidence Act, s. 30—Evidence—Confession—Retracted confession—Use of retracted confession as against person making it and as against co-accused.*—A retracted confession may be taken into consideration, that is, used as evidence, not only as against the person making it, but as against persons tried jointly with the confessing accused for the same offence. As regards the person making it a retracted confession may, even without any corroborative evidence, form the basis of a conviction. As regards other co-accused, although corroborative evidence may be necessary, it is not necessary that such corroborative evidence should by itself be sufficient to support a conviction; *semble*: that a conviction based on the unsupported evidence afforded by the confession of a co-accused would not be unlawful. *Queen-Empress* v. *Maiku Lal, I. L. R. 20 All. 483,* followed. *Empress* v. *Ashootosh Chuckerbutty, I. L. R. 4 Calc. 483,* discussed. *Queen* v. *Mohesh Biswas, 19 W. R. Cr. R. 16,* referred to. EMPEROR *v.* KEHRI (1907). **I. L. R. 29 All. 434**

CONFISCATION.

1.—*Forfeiture—Sedition—Printing Press—Instrument used for the commission of offence—Disposal of property—Criminal Procedure Code (Act V of 1898), s. 517—Penal Code (Act XLV of 1860), ss. 62, 124A.*—The first part of s. 517 of the Criminal Procedure Code refers to cases of offences relating to property or documents, *e.g.* where the Court directs, as in cases of theft or criminal misappropriation or offences of a similar description, that the property stolen or misappropriated be restored to its owner. The words "which has been used for the commission of any offence" refer to cases of the same nature, *i. e.*, to instruments like guns or swords produced in Court. A printing press cannot be said to have been used for the commission of sedition inasmuch as the offence consists in the publication, and not the printing, the press being only a remote instrument. ABINASH CHANDRA BHATTACHARJEE *v.* EMPEROR (1907) . **I. L. R. 34 Calc. 986**

2.—*Raj—Babuana or maintenance grant to younger members—Confiscation of Raj by Government—Effect on grantees—Restoration of Raj—Effect on rights acquired from Government during confiscation—Conditions of grant—Breach—Forfeiture.*—When the question was whether a grant of lands originally made for the maintenance of younger members of the family was resumable for the alleged breach of condition of the grant, and it appeared that subsequent to the grant the parent estate was confiscated by Government and Government settled with the grantees the lands held by them: *Held,* that this constituted a new settlement and when subsequently Government restored the estate to the grantor's heir, the transaction did not operate to recreate the maintenance grant with the conditions. When Government confiscated the estate all rights of the grantor as well as of the persons holding lands in the estate lapsed. The subsequent restoration of the estate did not destroy rights acquired whilst the estate was under forfeiture. *Ram Nundun Singh* v. *Janki Koer, 7 C. W. N. 57: I. L. R. 29 Calc. 828,* referred to. NARPAT SINGH DEO *v.* KASHIRAM SINGH DEO (1907) . . . . **11 C. W. N. 655**

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CONSTRUCTION OF STATUTES.

See LIMITATION ACT.
I. L. R. 31 Bom. 162

—*Bombay City Police Act (Bom. Act IV of 1902), ss. 12, 16, 18.*—In construing an expression of doubtful import occurring in a statute, the Court may well have regard to considerations outside the language of the Act. EMPEROR *v.* ATMARAM (1907) . . . . I. L. R. 31 Bom. 480

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See VENDOR AND PURCHASER.
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CONTRACT.

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1. CONSTRUCTION OF CONTRACTS. . 86
2. BREACH OF CONTRACT. . . . 89

See CARRIERS.

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See NON-OCCUPANCY RAIYAT.
I. L. R. 34 Calc. 516

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——to carry partly by land and partly by river—

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——under Bengal Municipal Act—

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1. CONSTRUCTION OF CONTRACTS.

1.—Contract Act (IX of 1872), s. 69—*Money voluntarily paid cannot be recovered back unless the party for whom such payment is made is bound to pay it—Revenue Recovery Act (II of 1864), s. 35—Applies only where party paying is tenant, mortgagor, or incumbrancer—Unregistered owner not bound to pay the revenue.*—An action to recover money paid is not maintainable under s. 69 of the Indian Contract Act, unless the person from whom it is sought to be recovered was bound to pay it. On this point the law under s. 69 of the Indian Contract Act is the same as the English Law. *Bonner* v. *Tottenham and Edmonton Permanent Investment Building Society,* [*1899*] *1 Q. B. 161,* referred to. The revenue due on land owned by one who is not the registered holder is not money which such owner is bound to pay under the Revenue Recovery Act, though it may be to his interest to do so and the registered holder voluntarily paying such revenue cannot recover it under s. 69 of the Contract Act. Neither can he recover it under s. 35 of the Revenue Recovery Act unless he is a tenant, mortgagor or incumbrancer of such land. BOJA SELLAPPA REDDY *v.* VRIDHACHALA REDDY (1906). I. L. R. 30 Mad. 35

2.—*Putni taluk—Benamidar—Contribution.*—The mortgagee of a share of a putni taluk, in order to save his interest therein, paid up the putni rent and claimed to recover a proportionate share thereof from the appellant who had, subsequent to the mortgage, purchased the mortgagor's share in the taluk. The appellant pleaded that he was only a benamidar for the mortgagor. *Held,* that the appellant having held himself out as the purchaser, and having got his name registered in the zemindar's books in place of his vendor, was *primâ facie* bound in law to pay the rent, and that under s. 69 of the Contract Act the mortgagee was entitled to succeed. UMESH CHANDRA BANERJEE *v.* KHULNA LOAN COMPANY (1906) . . . . . I. L. R. 34 Calc. 92

CONTRACT—*continued.*

3.—*S. 69 applies only in cases where one person pays money which another is bound to pay—Payment must be to another person.*—S. 69 of the Contract Act applies only where one person pays to *another* money which a third party is bound to pay. Where Government, as mulgeni tenant, pays to itself the assessment, payable by the mulgar (landlord), it is not a payment by Government to another person, and the amount so paid or retained cannot be recovered from the mulgar under s. 69 of the Contract Act. *Quære:* Whether the Government can be held to have such an interest as will bring it within the section, as the sale to avert which the payment is made can be brought about only by its own orders. SECRETARY OF STATE FOR INDIA *v.* FERNANDES (1907).

I. L. R. 30 Mad. 375

4.—**s. 70**—*Inamdar taking water for which zemindar is compelled to pay water-cess must recoup zamindar.*—When the holder of an inam within a zemindari takes for his benefit Government water and the zemindar, whose moveable and immoveable properties are liable for the payment of the cess to Government, pays them, the latter can recover the amount of cess so paid from the inamdar under s. 70 of the Contract Act. The zemindar must be considered as rendering himself liable for the benefit of the inamdar and as not intending to do so gratuitously. RAJA OF VENKATAGIRI *v.* VUDUTHA SUBBARAYUDU (1907) . . . . **I. L. R. 30 Mad. 277**

5.—*Official Assignee—Whether benefit of contract vests in Official Assignee—Indian Insolvent Act (11 and 12 Vict., C. XXI), ss. 7 and 24—Assignment of contract—Transfer of Property Act (IV of 1882), ss. 3, 6 (h)—"Actionable claim"—Contract Act (IX of 1872), s. 23—Fraudulent object.*—Property under a contract which an assignor can pass to an assignee, is an "actionable claim" within the meaning of s. 130 of the Transfer of Property Act, and would, under s. 7 of the Indian Insolvent Act, vest in the Official Assignee on the insolvency of the assignor. Under the joint action of s. 6 (*h*) of the Transfer of Property Act and s. 23 of the Contract Act, where the object of an assignment is fraudulent, the assignment is void and inoperative. *Decision of* SALE, *J., I. L. R. 33 Calc. 702,* affirmed. JAFFER MEHER ALI *v.* BUDGE-BUDGE JUTE MILLS CO. (1906) . . . . **I. L. R. 34 Calc. 289**

6.—*Sale of unascertained goods—Appropriation—Completion of sale—Transfer of ownership—Conditional appropriation—Jus disponendi—Mate's receipts—Bills of lading—Fraud—Conversion of mate's receipts into bills of lading without payment for goods—Pledge of bills of lading to a third party without notice of seller's claim for the price of goods—Contract Act (IX of 1872), ss. 77, 83, 95, 178.*—*A* agreed to purchase unascertained goods of a certain mark from *B*, the goods to be placed alongside the exporting vessel and to be paid for in cash against mate's receipts. Cl. 13

CONTRACT—*continued.*

of the contract provided: "Terms of payment: Cash on delivery of mate's or dock receipts or as provided in cls. 8, 9 and 11. Should the said receipts or warrants be retained by the buyers for examination, they shall remain the property of the sellers and be held by the buyers in trust for and at the absolute disposal of the sellers, until payment has been made in cash in terms of this contract, and if payment be made by cheque, until such cheque has been cashed." Under *A's* instructions the goods were marked and placed alongside the vessel and subsequently shipped. Mate's receipts made out in *A's* name were obtained by *B*, and made over to *A* for examination together with *B's* bill and the usual measurement and weighment certificates. Thereupon *A* obtained bills of lading in exchange for the mate's receipts and pledged them with *C*, who acted *bonâ fide* and without notice of *B's* claim. The goods were never paid for by *A*. *Held*, that there was an "appropriation" by the seller *B*, assented to by the buyer *A*, within the meaning of s. 83 of the Indian Contract Act. *Rohde v. Thwaites, 6 B. C. 388,* referred to. Under the conjoint operation of ss. 77 and 83 of the Indian Contract Act, the sale was complete and the property in the goods passed from the seller to the buyer, and the pledge by *A* of the bills of lading to *C* was valid. Cl. 13 did not reserve to the seller the right of disposing of the goods nor did it render the appropriation conditional on payment of the price. The pledge by *A* to *C* did not come within the proviso to s. 178 of the Indian Contract Act. *Per* GEIDT, *J.*—The object of cl. 13 was to secure the seller's lien on the goods. *Judgment of* SALE, *J.*, affirmed, *I. L. R. 33 Calc. 547.* JUGGERNATH AUGURWALLAH *v.* E. A. SMITH (1906).

I. L. R. 34 Calc. 173

7.—*Railway Company—Receipt of goods by one company for carriage over its own and another company's line—Liability in respect of overcharge made by delivering company—Bye-laws—Power of Railway Company to alter the principle of calculation of rates.*—Two wagon loads of chillies were received by the Station Master at Bezwada on the Nizam's Guaranteed State Railway for carriage to Agra station on the Great Indian Peninsula Railway at a rate of R270 per wagon for the whole distance. On arrival at Agra the Great Indian Peninsula Railway Company's Station Master demanded payment of higher rates, calculated per maund, and refused delivery until such rates were paid. The consignees paid under protest and sued both Railway Companies for a refund of the excess charges. *Held*, that the contract for carriage of the goods for the whole distance was one entire contract with the receiving Company, who were liable for the overcharge, if any, wrongfully demanded from the consignees. *Muschamp v. Lancaster and Preston Junction Railway Company, 8 M. & W. 421; 53 R. R. 758; Webber v. The Great Western Railway Company, 3 H. & C. 771,* and *Kalu Ram Maigraj v. The Madras Railway Company, I. L. R. 3 Mad. 240,* followed. *Held*

CONTRACT—*concluded.*

also, that a bye-law of the Great Indian Peninsula Railway Company which reserved to the Railway the right of remeasurement, reweighment, recalculation and reclassification of rates, terminals and other charges at the place of destination and of collecting before the goods are delivered any amount that may have been omitted or under-charged did not authorize the Great Indian Peninsula Railway Company to alter the contract between the parties and charge at the place of destination maund rates instead of wagon rates. CHUNI LAL *v.* THE NIZAM'S GUARANTEED STATE RAILWAY COMPANY, LIMITED (1906).

I. L. R. 29 All. 228

2. BREACH OF CONTRACT.

8.—*Marriage settlement—Construction of document—Agreement to pay annuity to bride.*—On the occasion of the marriage of the plaintiff, then a minor, with the son of the defendant, the defendant agreed with the father of the plaintiff to pay to the plaintiff unconditionally the sum of R500 a month from the date of the marriage, and the payment of this allowance was made a charge upon certain immoveable property specified in the agreement. The plaintiff after a time refused, for reasons stated by her in her plaint, to live with her husband. Subsequently to this the stipulated allowance having been stopped, the plaintiff sued on the agreement above referred to to recover arrears amounting to R15,000. *Held*, that the plaintiff, though not a party to the agreement in question, was entitled to sue on it; also, on a construction of the agreement that no conditions as to the conduct of the plaintiff being laid down therein the fact that the plaintiff refused to live with her husband was no bar to the suit. HUSAINI BEGAM *v.* KHWAJA MUHAMMAD KHAN (1906) . **I. L. R. 29 All. 151**

CONTRACT ACT (IX OF 1872).

——ss. 2, cl. (*g*), 23, 24—

See CIVIL PROCEDURE CODE.

I. L. R. 31 Bom. 552

——ss. 10, 11, 68, 247, 248—

See INFANT . . **11 C. W. N. 135**

——ss. 16, 19A—

—Contract induced by undue influence—Money-lender—Exorbitant rate of interest—Undefended suit—Court's right to interfere—Reasonable rate of interest, what is—Civil Procedure Code (XIV of 1882), s. 210—Power of High Court to make its money decrees payable by instalments.—Under ss. 16 and 19A of the Indian Contract Act the Court has power to interfere and relieve a defendant against what may appear to the Court to be unconscionable transactions. The circumstances in each case must be looked to in order to decide what would be a reasonable rate of interest to allow. Under s. 210 of the Civil Procedure Code this Court has the power to make its money decrees payable by instalments. *Per* CURIAM: The general impression prevailing in the minds of money-lenders in Bombay, as echoed in the plaintiff's affidavit, that in all cases they can defeat the provisions of the Code as to payment by instalments and get a decree for immediate payment by avoiding the Small Causes Court and coming to this Court, is erroneous and needs to be corrected. POMA DONGRA *v.* WILLIAM GILLESPIE (1907).

I. L. R. 31 Bom. 348

CONTRACT ACT (IX OF 1872)—*concluded.*

——s. 20—

See COVENANT, CONSTRUCTION OF.

I. L. R. 30 Mad. 284

——s. 23—

See AGREEMENT OPPOSED TO PUBLIC POLICY . **I. L. R. 30 Mad. 530**

See CONTRACT . **I. L. R. 34 Calc. 289**

——s. 23—

See NORTH-WESTERN PROVINCE (ACT II 1901), ss. 20, 21 AND 31.

I. L. R. 29 All. 327

——s. 38—

See LEGAL TENDER.

I. L. R. 34 Calc. 305

——s. 69—

See MADRAS REVENUE RECOVERY ACT, s. 35. . . **I. L. R. 30 Mad. 35**

——s. 69—

See PURCHASER. **I. L. R. 30 Mad. 461**

——ss. 77, 83, 95, 178—

See CONTRACT . **I. L. R. 34 Calc. 173**

——ss. 198, 211, 216—

See PRINCIPAL AND AGENT.

I. L. R. 29 All. 730

——s. 236—

—Principal and Agent.—S. 236 is not restricted to cases where an agent purports to act for a named principal, but follows the rule underlying the cases of *Rothschild* v. *Brookman, 2 Dow and Cl. 188*, and *Robinson* v. *Mollet, L. R. 7 E. & I. App. 802*, that an agent cannot recover on a contract if he really acts as a principal. SEWDUTT ROY MASKARA *v.* NAHAPIET (1907) . . **I. L. R. 34 Calc. 628**

——provisions of—

See INTEREST. . **I. L. R. 31 Bom. 354**

CONTRACT ACT (IX OF 1872) AS AMENDED BY ACT VI OF 1899.

——ss. 16, 74.—

See UNDUE INFLUENCE.

I. L. R. 34 Calc. 150

CONTRACT OF SERVICE.

See ADOPTION . . 11 C. W. N. 147

CONTRIBUTION.

See CONTRIBUTION, SUIT FOR.

See CONTRACT ACT (IX OF 1872), s. 69. I. L. R. 34 Calc. 9

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 82 . I. L. R. 34 Calc. 13

CONTRIBUTION, SUIT FOR.

1.—*Contribution—Co-heir not liable to contribute towards expenses incurred by other heirs in litigation in respect of common property.*—A co-heir is not liable, either under an implied contract or on grounds of equity, to contribute towards the expenses of litigation *bond fide* carried on by other heirs in respect of the common property. *Dakshina Mohan Roy* v. *Saroda Mohan Roy, I. L. R. 21 Calc. 142*, referred to. HALIMA BEE *v.* ROSHAN BEE (1907) . I. L. R. 30 Mad. 526

2.—*Civil Procedure Code, s. 586—Provincial Small Cause Courts Act (IX of 1887), Sch. II, Art. 41—No second appeal where in suits for contribution debt in respect of which contribution is sought, is created by the payment itself—Appealability determined by subject-matter of suit and not by amount claimed in execution.*—The suits for contribution exempted from the jurisdiction of Courts of Small Causes by Sch. II, Act IX of 1887, are suits in which contribution is claimed in respect of payment made by a sharer of money due from a co-sharer. The exemption does not apply to cases where no debt was due from the co-sharer prior to payment, but contribution is sought in respect of a debt which became due only by virtue of such payment. In such cases no second appeal will lie under s. 586 of the Code of Civil Procedure if the subject-matter of the suit is less than Rs500. In determining whether second appeals lie in such cases in execution proceedings, the amount of subject-matter of the suit and not the amount sought to be recovered in execution must be taken into consideration. MAVULA AMMAL *v.* MAVULA MARAGOIR (1906). I. L. R. 30 Mad. 212

CONVERSION.

See HINDU LAW.

CONVERSION OF MATE'S RECEIPTS.

See CONTRACT . I. L. R. 34 Calc. 173

CONVERTS.

See NATIVE CHRISTIANS. I. L. R. 31 Bom. 25

CONVICTION.

See PREVIOUS CONVICTION.

CONVICTION—*concluded.*

—*Conviction of an offence without specific charge.*—If the accused are charged with an offence under s. 304 or with one under s. 325, they may be convicted of an offence under s. 323 of the Penal Code, though no charge under that section has been drawn up against them. But when they are charged with those offences alleged to have been committed by another person in the course of a riot, *i.e.*, when they are charged under ss. 147, 304 and 325 combined with s. 149 of the Penal Code and the commission of the riot is disbelieved, they should not be convicted of the offence under s. 323 in respect of their individual acts with which they are not charged and which are not imputed to them in the Judge's charge to the Jury. DASARATH MANDAL *v.* EMPEROR (1907) . . . . I. L. R. 34 Calc. 325

CO-PARCENERSHIP.

See NATIVE CHRISTIANS. I. L. R. 31 Bom. 25

COPIES OF DOCUMENTS.

—*Criminal Procedure Code, ss. 162, 164—Right of accused to copies of statements made by Magistrate under.*—An accused person under remand is not, before the commencement of the preliminary inquiry, entitled to be furnished with copies of statements made on oath by various persons and recorded by the Magistrate under ss. 162 and 164 of Code of Criminal Procedure. No such right is conferred by the Code of Criminal Procedure and the question whether any person has a right to inspect a public document is outside the scope of the Evidence Act. Such statements may, however, be put to contradict the persons making them when called as witnesses and it will then form part of the record, of which the accused will be entitled to a copy after commitment. There is no general principle of common law which would entitle an accused person to copies of such documents. *Queen-Empress* v. *Arumugam, I. L. R. 20 Mad. 189*, distinguished. EMPEROR *v.* MUTHIA SWAMIYAR (1907). I. L. R. 30 Mad. 466

CO-SHARER.

See AGRA TENANCY ACT (LOCAL II OF 1901), s. 201 . I. L. R. 29 All. 158

See CONTRIBUTION, SUIT FOR.

See HINDU LAW—JOINT FAMILY.

See PARTITION . . 11 C. W. N. 397

—*Separate possession of distinct plots by arrangement—Sale by a co-sharer—Purchaser's right to exclusive possession.*—When by private arrangement amongst co-sharers, one of them is in exclusive possession of a certain portion of the *ijmali* land, a purchaser of the right, title and interest of the latter is entitled to be placed in the same

CO-SHARER—*concluded.*

position as his vendor. An arrangement amongst co-sharers like the above continues to be a good and binding arrangement until the co-sharers themselves agree to give it up and come to some other arrangement or until any one of the co-sharers demand a partition of the entire joint lands either in Court or out of Court. KUMUDINI MAZUMDAR *v.* RASIK LAL MAZUMDAR (1906) . . **11 C. W. N. 517**

CO-SHARER LANDLORD.

See BENGAL TENANCY ACT, SCH. III, ART. 2 (*b*) . . . **11 C. W. N. 1026**

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See JURISDICTION OF CIVIL COURTS.

1. APPEAL.

1.—*Costs—Execution of decree—Application for execution of order as to costs—Appeal to Privy Council—Jurisdiction—Inherent power of Court—Civil Procedure Code (Act XIV of 1882), s. 583.*—The High Court made an order dismissing an application for leave to appeal to His Majesty in Council, with costs. *Held*, that although there is no section in the Code of Civil Procedure directly applicable to the case yet, by analogy to s. 583 of the Code, the proper Court to execute the order as to costs is the lower Court. The Code of Civil Procedure is not exhaustive, and when a Court has made an order which it has jurisdiction to make, there is inherent power in the Court to have that order carried into effect. JOGENDRA CHANDRA SEN *v.* WAZIDUNNISSA KHATUN (1907) . . . **I. L. R. 34 Calc. 860**

2. MORTGAGE-DECREE.

2.—*Transfer of Property Act, ss. 88, 90—Mortgage-decree under s. 88 cannot impose personal liability for costs—Such liability should be enforced under s 90.*—It will be contrary to the scheme of the Tran fer of Property Act and to the practice of the Engl sh Courts of Equity to make the mortgagor personally liable for costs in any case before the sale-proceeds have proved insufficient to

COSTS—*concluded.*

satisfy the mortgage claim. *Sharples* v. *Adams, 32 Beav. 213*, referred to. *Liverpool Marine Credit Co.* v. *Wilson, L. R. 7 Ch. 507*, referred to. A decree under s. 88 of the Transfer of Property Act must not order the defendants personally to pay the costs. It may contain a declaration of the personal liability of defendant for principal or costs, but such a declaration is not part of the usual form of decree under the Transfer of Property Act and is enforceable only under s. 90. The words "the amount due on the mortgage for the time being" in s. 90 must be taken to include costs. *Moqbul Fatima* v. *Lalta Prasad, I. L. R. 20 All. 523*, referred to. KAMALAMMA *v.* KAMANDUR NARASIMHA CHARLU (1907) . **I. L. R. 30 Mad. 464**

3. PARTITION.

3.—*Costs—Suit for partition—Apportionment of costs of partition between lessor and lessee—Appeal.*—In a suit for partition certain defendants were made parties both in their character as proprietors and also as *mokarari* lessees of a fraction of the share owned by the plaintiff, and by the partition, allotments were made so as to give them separate possession of different parcels representing their proprietary and tenancy interests respectively. *Held*, that the costs of partition proportionate to the share held by the defendants in *mokarari* should be borne by the lessor and the lessees in proportion to their respective interests in the share. *Herbert* v. *Hedges, 10 Ir. Eq. Rep. 479*; *Herbert* v. *Eyre, 2 Jones (Ir.) 803*; *Cornish* v. *Gest, 2 Cox 27*, referred to. Costs in a partition suit up to the stage of the preliminary decree should ordinarily be borne by the parties themselves. *Shama Soondaree Debia* v. *Jardine, Skinner & Co., 12 W. R. 160*, followed. An appeal will lie upon a question of costs when a matter of principle is involved. DILDAR ALI KHAN *v.* BHAWANI SAHAI SINGH (1907). **I. L. R. 34 Calc. 878**

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COURT-FEE.

See CIVIL PROCEDURE CODE, S. 411. **I. L. R. 29 All. 537**

See COURT FEES ACT (VII OF 1870).

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See PLAINT, REJECTION OF.
I. L. R. 34 Calc. 20

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See COURT FEES ACT (VII OF 1870), s. 2.
I. L. R. 30 Mad. 32

1.—*Court Fees Act (VII of 1870), s. 7, sub-s. (iv), cls. (c) and (d)—Suit for declaration and consequential relief—Valuation of suit—Court's power to revise plaintiff's valuation—Civil Procedure Code (Act XIV of 1882), s. 54, cl. (b).*—In cases covered by s. 7, sub-s. (*iv*), cls. (*c*) and (*d*) of the Court Fees Act, although it is for the plaintiff to state the amount at which he values the relief sought and although the amount of Court-fees payable varies with the amount at which the relief sought is valued in the plaint, it is open to the Court if a question is raised as to the true valuation of the suit to determine such question, and it is within the power of the Court to take action under s. 54 of the Civil Procedure Code if it is established that the valuation is improper. Where the suit was for a declaration that a mortgage-decree for Rs. 10,000 obtained by the defendant against the plaintiff was fraudulent and for an injunction to restrain the defendant from executing it by a sale of the mortgaged properties: *Held*, that the prayer for injunction was a prayer for consequential relief within s. 7, sub-s. (*iv*), cl. (*c*) of the Court Fees Act. That the proper value of the relief by way of injunction was the amount sought to be realised under the decree, and the plaintiff's valuation of the same at Rs. 100 was so manifestly unjust that the Court was justified in rejecting the plaint under s. 54, Civil Procedure Code. *Hari Sanker* v. *Kali Kumer, I. L. R. 32 Calc. 734*, referred to. *Baidynath* v. *Makham Lal, I. L. R. 17 Calc. 650*, approved. UMATUL BATUL *v.* NANJI KOER (1907).
11 C. W. N. 705

——insufficiency of—

2.—*Court Fees Act (VII of 1870), ss. 9, 10, 11, 28—Court-fee—Plaint—Court-fee on plaint discovered during progress of suit to be insufficient—Limitation—Act No. XV of 1877 (Indian Limitation Act), s. 4.*—*Held*, that when it has been discovered that through mistake or inadvertence a plaint has been filed on an insufficient court-fee stamp the Court upon discovering the mistake can at any time and without any regard to limitation have the proper court-fee made up, and when it is so made up, the plaint is as valid as if it had been properly stamped when presented. The principle of the decision in *Balkaran Rai* v. *Gobind Nath Tewari, I. L. R. 12 All. 129*, so far as applicable to plaints, rejected. HABI RAM *v.* AKBAR HUSAIN (1907).
I. L. R. 29 All. 749

COURT FEES ACT (VII OF 1870).

See COURT-FEE.

——s. 2—

—Does not contemplate the fixing by the decree of a time for payment of extra Court-fees—Where Court fixed such time, payment within such time no condition precedent to execution.—It is not intended by the first part of s. 2 of the Court Fees Act that the Court should fix a time for the payment of the extra Court-fee in respect of mesne profits subsequent to the institution of the suit but that execution in respect of such profits should be stayed till such payment is made. Where the Court by its decree directs the payment of such Court-fees within a fixed time, such direction is no part of the decree and execution of the decree is not conditional on payment within the time so fixed. PERIANAN CHETTI *v.* NAGAPPA MUDALIAR (1906) . . . . **I. L. R. 30 Mad. 32**

——s. 7 (iv), cl. (c)—

See VALUATION OF SUIT.
I. L. R. 30 Mad. 18

——s. 7, paras. iv, v, vi, ix and x, cl. (d)—

See SUITS VALUATION ACT.
I. L. R. 31 Bom. 73

——s. 7, sub-s. (iv)—

See COURT FEES. . **11 C. W. N. 705**

——ss. 7, v (b), (d); 28—

—Court-fee—Document received through mistake or inadvertence.—The plaintiff in a suit for pre-emption stated in his plaint—"The suit is valued at Rs. 197-8-0, five times of Rs. 39-8-0, the amount of revenue of the property." The property claimed was described as "41 bighas 10 biswas 5 biswansis paying a revenue of Rs. 39-8-0, entered as holding No. 2 in the khewat, out of a 3 biswa 10 biswansi 18 kachwansi 9 nanwansi 15 tanwansi share, comprising an area of 101 bighas, paying a revenue of Rs. 95, situate in thok Deputy Ali Raza Khan, in village Ukarna." The Munsarim of the Court in which the plaint was presented on the last day of limitation accepted this valuation and reported that the plaint was properly stamped. *Held*, that inasmuch as the plaintiff had not stated whether the revenue payable in respect of the share claimed had been separately assessed and recorded in the Collector's register as such, it became the duty of the Munsarim to inquire whether it was separately assessed. The plaint had been admitted through the mistake or inadvertence of the officer of the Court and the plaintiff was entitled to the benefit of s. 28 of the Court Fees Act, 1870. HASIB-UL-NISSA *v.* GHAFURULLAH KHAN (1907) . **I. L. R. 29 All. 382**

——s. 7, Sch. I, Art. I—

—Appeal, valuation of, when no amount claimed, but dispute about liability of certain properties—Value of such properties—Proper valuation of the appeal.—S. 7 of the Court Fees Act has no application in the case of appeals in which no amount is claimed. Where the appellant in an appeal against a mortgage decree does not dispute the amount decreed, but raises the question of the liability of certain properties for the decree amount, the value of the appeal, for the purpose of Court fees, under

COURT FEES ACT (VII OF 1870)—*concluded.*

Art. I of Sch. I of the Court Fees Act, is the value of such properties, when such value is less than the amount decreed and when such value exceeds the amount decreed, such decree amount. *Venkappa* v. *Narasimha, I. L. R. 10 Mad. 187,* followed. *Krishnama Chariar* v. *Srinivasa Ayyangar, I. L. R. 4 Mad. 339,* followed. KESAVARAPU RAMAKRISHNA REDDI *v.* KOTTA KOTA REDDI (1906).
I. L. R. 30 Mad. 96

——s. 11—

See VALUATION OF SUIT.
I. L. R. 34 Calc. 954

——s. 17—

—Two or more distinct subjects—First part of section applies to cases where alternative reliefs on different causes of action are joined in one suit.—The operation of s. 17 of the Court Fees Act is not necessarily confined to cases where cumulative reliefs are claimed. Alternative claims, forming different matters which could have been made the grounds of separate suits, are 'distinct subject' within the meaning of the section, although they arise out of the same instrument and a suit for enforcing such alternative claims ought to be valued for the purpose of Court-fees as also of jurisdiction on the aggregate value of such reliefs. *Kashinath Narayan* v. *Govinda Bin Piraji, I. L. R. 15 Bom. 82,* not followed. NEELA KANDAHN NAMBUDRIPAD *v.* TIRUNILAI ANANTHAKRISHNA AYYAR (1906).
I. L. R. 30 Mad. 61

—Court-fee—Suit embracing two or more distinct subjects – Suit based primarily on an agreement to sell with an alternative claim for pre-emption.—The plaintiff came into Court claiming in the first place specific performance of an alleged agreement to sell to him certain immovable property, and secondly, in the alternative, the enforcement of a pre-emptive right in respect of mortgage of the same property executed by one of the defendants in favour of the other. *Held,* that the suit was within the meaning of s. 17 of the Court Fees Act, 1870, a suit embracing two distinct subject matters and therefore chargeable with the court fee assessable upon each alternative relief separately. HASHMAT-UN-NISSA *v.* MUHAMMAD ABDUL KARIM (1906) . **I. L. R. 29 All. 155**

COURT OF WARDS.

——discretion of—

—Power of Court of Wards to sell property under its superintendence.—The estate of a Mahommedan lady, named Hawa Begam, was at her own request taken under the superintendence of the Court of Wards under s. 194, cl. (*g*), of Act No. XIX of 1873. This was in 1896. In 1902 the Court of Wards sold a portion of Hawa Begam's property, as was alleged without her consent. *Held,* on suit by persons claiming title through Hawa Begam to recover the property so sold, that the Court of Wards was under the circumstances entitled to sell, even without

COURT OF WARDS—*concluded.*

the owner's consent, and that its discretion could not be questioned in any Civil Court. MOHSAN SHAH *v.* MAHBUB ILAHI (1907) . **I. L. R. 29 All. 589**

COVENANT.

——construction of—

See PERSONAL COVENANT.

—Transfer of Property Act (IV of 1882), ss. 55, 59—What amounts to a "contract to the contrary" within the meaning of section – Contract Act – (IX of 1872), s. 20—Mistake does not prevent the party from claiming the protection of a special covenant—Want of attestation as laid down in s. 59 of the Transfer of Property Act will not bar the personal remedy.—A, who had brought a suit to recover the amount due on a mortgage executed to him, assigned to *B* for valuable consideration all his claims under the mortgage deed and in the suit brought by *A*. The assignment contained a covenant that "*A*, his executors or administrators shall not be liable for any derect in the claim hereby transferred and assigned or for any sums of money that may not be recovered." Subsequent to the assignment, *B* was added as a co-plaintiff in the suit brought by *A* and it was discovered that the mortgage executed to *A* was inoperative as it was attested by only one witness and the suit was withdrawn. *B* filed a suit against *A* for a declaration that the contract of assignment was void and for a return of the consideration paid. *Held,* that *A* was entitled to claim the benefit of the covenant, which exempted him from any liability, even though both *A* and *B* acted under the mistaken belief that the mortgage was valid and that *A* was not bound to refund the consideration received. *Per* Sir ARNOLD WHITE, *C.J.*—The covenant is a "contract to the contrary" within the meaning of s. 55 of the Transfer of Property Act which will negative the statutory covenant of title under the section. *Per* Sir S. SUBRAHMANIA AYYAR, *J.*—Non-compliance with the rule laid down in s. 59 of the Transfer of Property Act as to attestation does not render the personal covenant void. *Madras Deposit and Benefit Society, Limited* v. *Oonnamalai Ammal, I. L. R. 18 Mad. 29,* not approved. The existence of a separate warranty in a contract is evidence that the matter of the warranty is not a condition or essential part of contract, a mistake in regard to which will render the contract void under s. 20 of the Contract Act. SADA KAVAUR *v.* TADEPALLY BASAVIAH (1906) . **I. L. R. 30 Mad. 284**

CO-WIDOWS.

See HINDU LAW.
I. L. R. 31 Bom. 560

CRIMINAL BREACH OF TRUST.

See PENAL CODE (ACT NO. XLV OF 1860), ss. 62, 406. . **I. L. R. 29 All. 25**

CRIMINAL PROCEDURE CODE (ACT V OF 1898).

——ss. 4 (o), 192, Sch. II, last clause—

See CATTLE TRESPASS ACT (I OF 1871), s. 20, SCH. II . I. L. R. 34 Calc. 926

—— ss. 10 (2), 12, 528—

See MAGISTRATES, SUBORDINATION OF.
I. L. R. 34 Calc. 918

—— ss. 54—

See PENAL CODE (ACT No. XLV OF 1860), s. 223. . . I. L. R. 29 All. 377

—— ss. 59, 60—

See PENAL CODE, s. 225.
I. L. R. 29 All. 575

—— ss. 65, 105—

—Bombay Prevention of Gambling Act (Bom. Act IV of 1887), ss. 4, 5, 6, 7—Gambling—Keeping a common gaming house—Presumption under s. 7 of the Act.—Where the Bombay Prevention of Gambling Act has provided for the manner or place of investigating or inquiring into any offence under it, its provisions must prevail and the Criminal Procedure Code must give way. Accordingly, no provision of the Code as to the authority empowered to issue a warrant for arrest or search, or the person to whom and the conditions under which such warrant may be issued can apply for the purposes of s. 7 of the Act. The authority, the persons and the conditions must be respectively those specifically mentioned in s. 6 of the Act and no other. But the special provision in s. 6 would still be subject to the general provisions of ss. 65 and 105 of the Code. EMPEROR *v.* FERNAD (1907) . . . . I. L. R. 31 Bom. 438

—— s. 106—

See SECURITY TO KEEP THE PEACE.
I. L. R. 30 Mad. 48; 11 C. W. N. 840

—— s. 106 (3)—

—Order for security cannot be made by Appellate Court when original conviction not by one of the Courts specified in the section.—An order for security cannot be made under s. 106 (3) of the Code of Criminal Procedure by a Court of Appeal or Revision which is one of the Courts specified in the section, when confirming the original conviction of a Court which is not one of those specified therein. *Muthia Chetty* v. *Emperor, I. L. R. 29 Mad. 190,* referred to and doubted. DORASAMI NAIDU *v.* EMPEROR (1906) . . I. L. R. 30 Mad. 182

—— s. 107—

See BAIL . . . 11 C. W. N. 415

See MISJOINDER OF PARTIES.
11 C. W. N. 472

See SECURITY TO KEEP THE PEACE.

—— ss. 107, 112, 117—

—Order for security not to be made without recording legal evidence.—An order requiring a person to furnish security has the effect of a conviction, as the person so required is liable to imprisonment if he fails to comply with the order. Such an order ought not to be passed without formal evidence being recorded. *Reg.* v. *Jinji Limji, 6 Bom. H. C. Cr. C. 1,* referred to. *Reg.* v. *Talpatram Pamabhai, 5 Bom. H. C. Cr. C. 105,* referred to. PRATHIPATI VENKATASAMI *v.* EMPEROR (1907).
I. L. R. 30 Mad. 330

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*continued.*

—— s. 108—

See SEDITION . I. L. R. 34 Calc. 991

—— s. 110—

See SECURITY FOR GOOD BEHAVIOUR.

—— ss. 110 (e), 112, 107—

—Enquiry under s. 107 illegal without issuing notice under s. 112.—A Magistrate before taking action under s. 107 of the Code of Criminal Procedure is bound to issue the notice required by s. 112 and his omission to do so is an illegality which will render the subsequent proceedings invalid. A notice issued with reference to s. 110 (*e*) is not sufficient as a preliminary to the Magistrate making an order under s. 107. KRISHNASWAMI THATHACHARI *v.* VANAMAMALAI BHASHIAKAR (1906).
I. L. R. 30 Mad. 282

s. 125—

—Security to keep the peace—Power of the District Magistrate to cancel a security bond.—A District Magistrate has power under s. 125 of the Code of Criminal Procedure to direct the cancellation of a bond to keep the peace executed on an order by a Subordinate Magistrate, on other grounds than that the bond is no longer necessary. *Barka Chandra Dey* v. *Janmejoy Dutt, I. L. R. 32 Calc. 948,* overruled. NABU SARDAR *v.* EMPEROR (1906).
I. L. R. 34 Calc. 1

—— s. 144—

See JURISDICTION OF CRIMINAL COURTS.
11 C. W. N. 79

See SECURITY TO KEEP THE PEACE.
11 C. W. N. 121

—Apprehended danger—Prohibitory order without express limitation of time—Legality of the order.—An order under s. 144 of the Criminal Procedure Code is not bad because it does not state that its operation is confined to two months, or some shorter period, from the making thereof. Unless there is something in the order which shows that it was intended that it should remain in force for more than two months, it must be presumed that the order is to be limited to two months as required by cl. (5) of the section. *Golam Mohamad* v. *Bhubhan Mohun Moitra, 2 C. W. N. 422; Remjit Singh* v. *Luchman Prosad, 7 C. W. N. 140,* and *Bidhu Ranjan Majumdar* v. *Ramesh Chandra Rai, 11 C. W. N. 223,* discussed. RAM NATH CHOWDHRY *v.* EMPEROR (1907) . . . . I. L. R. 34 Calc. 897

—Order prohibiting holding of hát within a certain area—Proper procedure.—Where an order under s. 144, Criminal Procedure Code, enjoined the

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*continued.*

petitioner not to establish a rival market within a quarter of a mile of a certain market place: *Held*, that it was not a proper order under s. 144, Criminal Procedure Code, as it did not mention any limits of time and there was nothing in the order to indicate whether the petitioner would be entitled to hold any market at any time within a quarter of a mile. The object of s. 144, Criminal Procedure Code, is not that orders should be made prescribing the holding of *hâts* indefinitely within a certain area for two months. The proper way of preventing a breach of the peace is to proceed under s. 107, Criminal Procedure Code. BIDHU RANJAN MAZUMDAR *v.* RAMESH CHANDRA RAI (1906) . . . . 11 C. W. N. 223

—*When order should not be passed under—Question of possession disputed—Proper procedure—S. 145, Criminal Procedure Code.*—In a dispute regarding land when the question of possession is disputed between the parties, the proper procedure to be adopted by the Magistrate is to pass an order in a proceeding under s. 145, Criminal Procedure Code, deciding the question of possession on evidence, and not an order in a proceeding under s. 144, Criminal Procedure Code. Where in a proceeding under s. 144, Criminal Procedure Code, the Subdivisional Magistrate, holding that the 1st party were in possession, directed the 2nd party to refrain from interfering with that possession but the District Magistrate in revision, holding that the 2nd party were entitled to possession, directed them to continue in possession and prohibited the 1st party from interfering with their possession: *Held*, that both orders were bad in law. PARKAR MAHTON *v.* RAM KHELWAN (1906) . . . 11 C. W. N. 271

——— s. 145, cl. (6)—

See JURISDICTION OF CRIMINAL COURT.
11 C. W. N. 743

——— s. 145 —

—*Police report—Likelihood of breach of peace—Interference by High Court—Subject-matter of dispute not clearly defined—Trees, dispute as to.*—The High Court may interfere in a proceeding instituted by a Magistrate under s. 145, Criminal Procedure Code, when the police-report on which the proceeding is based states in the vaguest terms that each of the parties claims a certain right, and that inasmuch as both the parties are men of substance there might be a breach of the peace. Before a proceeding is drawn up under s. 145, Criminal Procedure Code, the subject-matter of the dispute must be clearly determined. SURJAKANTA ACHARJA *v.* JAGADINDRA NATH ROY (1906).
11 C. W. N. 198

—*Joint property—Exclusive possession, claim to—Jurisdiction*—Proceedings under s. 145, Criminal Procedure Code, cannot be instituted with respect to a dispute between two parties having joint rights to the land in dispute, each claiming exclusive possession thereof. MAKHAN LAL ROY *v.* BARADA KANTA ROY (1906) . . 11 C. W. N. 512

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*continued.*

—*Breach of peace—Likelihood—Police-report stating possibility of a breach of the peace.*—Where proceedings under s. 145, Criminal Procedure Code, were instituted on a police-report which showed that the two parties were disputing about the possession of a tank and that they were big zemindars, and which stated that though there was nothing to show that there was a likelihood of a breach of the peace, yet it was not impossible that there should be a breach of the peace: *Held*, that the police-report as it is cannot be and ought not to be the foundation of a proceeding under s. 145, Criminal Procedure Code. The opinion expressed by the police-officer without sufficient materials ought not to be the ground for the institution of the proceedings. Every case in which the question as to the likelihood of a breach of the peace that should justify the initiation of proceedings under s. 145, Criminal Procedure Code, arises, must be judged on its own merits. MAHARAJ BAHADUR SINGH *v.* RAJA RANJIT SINGH (1906).
11 C. W. N. 835

—*Omission of Magistrate to state grounds for passing order is an irregularity and does not render the proceedings void, if no prejudice caused thereby.*—The omission of a Magistrate, in his order initiating proceedings under s. 145 of the Code of Criminal Procedure, to state the grounds on which he is satisfied that there was a dispute likely to cause a breach of the peace, is an irregularity, and will not, when the party is not prejudiced in the conduct of the inquiry by such omission, render the proceedings of the Magistrate void. Want of notice to one party in possession cannot be set up by another party who had notice and who appeared in the proceedings. CHINNAPPUDAYAN, *In the matter of* (1907).
I. L. R. 30 Mad. 548

——— ss. 145, 146—

—*Jurisdiction of Magistrate—Order on written statement without any evidence—High Court, jurisdiction of.*—Sub-s. (*i*) is not the only provision in s. 145 of the Criminal Procedure Code which lays down what matters relate to the jurisdiction of the Magistrate. There are other provisions in the section, the contravention of which affects his jurisdiction, and so gives the High Court power to interfere. Where the Magistrate passed an order under s. 146 of the Code, only upon the written statements of the parties and without taking any evidence: *Held*, that the order was without jurisdiction, and that the High Court had power to set it aside. *Surjya Kanta Acharjee* v. *Hem Chunder Chowdhry I. L. R. 30 Calc. 508*, followed. *Sukh Lal Sheikh* v. *Tara Chand Ta, I. L. R. 33 Calc. 68.* explained. KOLHA KOER *v.* MUNESWAR TEWARI (1907).
I. L. R. 34 Calc. 840

——— s. 154 —

See FIRST INFORMATION.
11 C. W. N. 554

——— ss. 162, 164—

See COPIES OF DOCUMENTS.
I. L. R. 30 Mad. 466

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*continued.*

——s. 167 (3)—

See POLICE CUSTODY.

11 C. W. N. 554

——s. 195—

See CIVIL PROCEDURE CODE, s. 647.

I. L. R. 30 Mad. 311

See SANCTION FOR PROSECUTION.

I. L. R. 34 Calc. 848

——s. 195, sub-s. (1), cl. (b)—

See SANCTION FOR PROSECUTION.

11 C. W. N. 909

——s. 195, cls. (4), (6)—

See SANCTION FOR PROSECUTION.

11 C. W. N. 195

——s. 195 (6)—

See APPEAL, CRIMINAL CASES.

I. L. R. 30 Mad. 382

—*Appeal—Remand.*—The powers conferred under s. 195 of the Code of Criminal Procedure are of a very special nature and no inherent jurisdiction can be attributed to any Court in the exercise of such powers, unless it is incident to their proper exercise. A Court to which an appeal is presented against an order granting or refusing sanction under s. 195 of the Code of Criminal Procedure has no power to remand the case for a fresh inquiry. RAMA AYYAR v. VENKATACHELLA PADAYACHI (1907).

I. L. R. 30 Mad. 311

——s. 200—

See COMPLAINT. 11 C. W. N. 170

——s. 203—

—*Complaint—Jurisdiction—Dismissal of complaint no bar to the cognizance of a fresh complaint in pari materiâ.*—There is nothing to prevent a Magistrate from entertaining a second complaint made against the same person even though the second complaint may be connected with a previous complaint which has already been dismissed under the provisions of s. 203 of the Code of Criminal Procedure. *Queen-Empress* v. *Umedan, Weekly Notes, 1895, 86,* followed. *Dwarka Nath Mondul* v. *Beni Madhab Banerji, I. L. R. 28 Calc. 652,* and *Mir Ahwad Hossein* v. *Mahomed Askari, I. L. R. 29 Calc. 726,* referred to. *Queen-Empress* v. *Adam Khan, I. L. R. 22 All. 106,* distinguished. EMPEROR v. MEHEBAN HUSAIN (1906).

I. L. R. 29 All. 7

——ss. 203, 437—

See FURTHER INQUIRY. 11 C. W. N. 316

——ss. 215, 436—

—*S. 215 applies only to a commitment actually made and not to order by Sessions Judge directing committal.*—The provisions of s. 215 of the Code of Criminal Procedure apply only to a commitment actually made and not to a case where a Sessions Judge, in exercise of the powers

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*continued.*

vested in him by s. 436 of the Code, sets aside an order of discharge made by a Magistrate and directs a committal to the Session. In such cases the High Court may consider the facts, as well as the questions of law involved, to determine whether the Sessions Judge has exercised a proper discretion. *Pirthi Chand Lal* v. *Sampatia, 7 C. W. N. 327,* referred to. MUTHIA CHETTY v. EMPEROR (1906).

I. L. R. 30 Mad. 224

——ss. 227, 228, 199, 238, 537—

—*Charge—Addition of a charge—Irregularity—Indian Penal Code (Act XLV of 1860), ss. 363, 366, 498.*—The accused was tried on charges under ss. 363 (kidnapping from lawful guardianship) and 366 (kidnapping a woman) of the Indian Penal Code (Act XLV of 1860). At the conclusion of the evidence to establish those charges and after the evidence for the defence had been recorded, the Court added a charge under s. 498 (enticing a married woman) of the Code, notwithstanding the objection by the accused's counsel. The trial ended in conviction of the accused on all the three charges. The accused appealed contending that the procedure adopted was contrary to the provisions of s. 199 of the Criminal Procedure Code and to the spirit of s. 238 of the Code:—*Held,* (1) that the procedure adopted in the case was not regular. The additional charge framed at the stage it was framed, notwithstanding the objection by the accused's counsel, was prejudicial to the accused; (2) that the conviction under s. 498 of the Indian Penal Code should be set aside: and further investigation be made into the remaining charges. EMPEROR v. ISAP MAHOMED (1906).

I. L. R. 31 Bom. 218

——ss. 233, 234, 235—

See JOINDER OF CHARGES.

I. L. R. 30 Mad. 328

——ss. 233, 234—

See JOINT TRIAL.

——ss. 233, 537—

See JOINDER OF CHARGES.

11 C. W. N. 54

——ss. 235, 307—

See JOINDER OF CHARGES.

11 C. W. N. 715

——s. 250—

—*Frivolous complaint—Jurisdiction—Complaint dismissed without issue of process.*—*Held,* that s. 250 of the Code of Criminal Procedure is not applicable to a case in which a complaint is dismissed without any process being issued for the attendance of the person against whom such complaint is made. BHAGWAN SINGH v. HARMUKH (1906) . . . . I. L. R. 29 All. 137

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*continued.*

——ss. 297, 537—

See CHARGE TO JURY.
I. L. R. 30 Mad. 44

——s. 307—

See JURY, TRIAL BY.
I. L. R. 30 Mad. 469

——ss. 307, 310—

—Accused cannot be asked to plead to prior convictions when case referred to High Court under s. 307, before the High Court convicts on such reference.—Ss. 307 and 310 of the Code of Criminal Procedure clearly provide that an accused is not to be asked to plead to prior convictions until he has been convicted on the charge under trial. Where a Court of Session makes a reference to the High Court under s. 307 of the Code of Criminal Procedure, there is no conviction or acquittal in the Sessions Court and it is only after conviction by the High Court that the accused can be asked to plead to prior convictions. EMPEROR *v.* KANDASAMI GOUNDAN (1904).
I. L. R. 30 Mad. 134

——s. 339—

—Pardon—Pardon granted after accused has had an opportunity of cross-examining the witnesses for the prosecution—Withdrawal of pardon and subsequent commitment.—Where a pardon was tendered by a Magistrate to an accused person after he had had an opportunity as an accused person of cross-examining the witnesses for the prosecution, and on its appearing that he had not made a full and true disclosure of the facts of the case such pardon was withdrawn and he was committed along with his co-accused to the Court of Session: *Held*, that the commitment was not open to objection. *Queen-Empress* v. *Brij Narain Man, I. L. R. 20 All. 529*, followed. EMPEROR *v.* BUDHAN (1906).
I. L. R. 29 All. 24

——ss. 408, 435—

See JURISDICTION.
I. L. R. 30 Mad. 136

——s. 423—

See SENTENCE, ENHANCEMENT OF.
I. L. R. 30 Mad. 103

——ss. 423 (1), 528—

—Appellate Court can itself try the offender—Cognizance in such cases under s. 190 (*b*) *and not* 190 (*c*)—*S. 423* (*1*) (*b*) *of the Code of Criminal Procedure ought to be read with s. 528 of the Code.*—The provisions of s. 423 (1) (*b*) do not preclude an Appellate Court, when it reverses the finding and sentence under appeal, from trying the offender itself, if the offence is one ordinarily triable by it. In such cases, the Appellate Court takes cognizance under s. 190 (*b*) and not s. 190 (*c*). EMPEROR *v.* MANIKKA RAMANI (1906).
I. L. R. 30 Mad. 228

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*continued.*

——s. 435—

—Revision—Executive order—Order of District Magistrate dismissing a headman.—Held, that an order passed by a District Magistrate under the rules framed by Local Government under s. 45 (3) of the Code of Criminal Procedure is an executive order and not subject to the revisional powers of the High Court. DAMMA, *In the matter of the petition of* (1907) . . . . I. L. R. 29 All. 563

——s. 476—

See HIGH COURT, JURISDICTION OF.
I. L. R. 34 Calc. 42

——s. 476—

—Order for prosecution—Power of successor in office to make order—"Court."—The summary power conferred by s. 476 of the Criminal Procedure Code (Act V of 1898) can be exercised by the Judge who tries the case in the course of the trial of which the alleged offence is committed, and such power is exerciseable only at, or immediately after, the conclusion of the trial; an application for sanction under s. 195 of the Code can be made later on as an entirely different and independent proceeding. To give true effect to the whole of the language of s. 476 the expression "Court" can only mean the Judge who tries the case. *Krishna Gobinda Dutt, In the matter of, 9 C. W. N. 859*, is rightly decided. *Per* GEIDT, *J.*—The terms of s. 476 indicate that the desirability of prosecuting the offender must be present to the mind of the Court during the proceedings in the course of which the offence was committed or brought to its notice. It was never intended that when the proceedings had terminated, the attention of the Court should be subsequently drawn by some private person to the fact that in those proceedings there had been committed some offence in contempt of the Court's authority or against public justice which deserved punishment. But no universal rule can be laid down that in no case can the order for a prosecution be made by an officer other than that before whom the offence was committed. *Emperor* v. *Molla Fuzla Karim, I. L. R. 33 Calc. 193*, and *Dharamdas Kamar* v. *Sagore Santra, 11 C. W. N. 119*, referred to. BEGU SINGH *v.* EMPEROR (1907).
I. L. R. 34 Calc. 551

——s. 488—

See JURISDICTION OF CIVIL COURTS.
I. L. R. 30 Mad. 400

——s. 488, cl. 4—

See ADULTERY, LIVING IN.
I. L. R. 30 Mad. 332

——s. 517—

—Disposal of property by Magistrate.—Under the provisions of s. 517 of the Criminal Procedure Code (Act V of 1898) the Magistrate has power to pass an order regarding the property produced before

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*continued.*

or in custody of the Court, even though no offence has been committed in respect of it. *Surendra Nath Sarma* v. *Rai Mohan Das, I. L. R. 30 Calc. 690*, referred to. RUSSUL BIBEE *v.* AHMED MOOSAJEE (1906) . . . **I. L. R. 34 Calc. 347**

———s. 517—

—*Property used for commission of offence*—*—Confiscation—Printing press.*—The first part of s. 517 of the Criminal Procedure Code refers to cases of offences relating to property or documents, *e.g.*, where the Court directs, as in cases of theft or criminal misappropriation or offences of similar description, that the property stolen or misappropriated be restored to its owner. The words "which has been used for the commission of any offence" refer to cases of the same nature, *i.e.*, to instruments like guns or swords produced in Court. A printing press cannot be said to have been used for the commission of sedition, inasmuch as the offence consists in the publication, and not the printing, the press being only a remote instrument. ABINASH CHANDRA BHATTACHARJEE *v.* EMPEROR (1907).
I. L. R. 34 Calc. 986

———s. 526—

See TRANSFER.
I. L. R. 30 Mad. 233; 11 C. W. N. 507

———s. 528—

See TRANSFER OF CRIMINAL CASES.
I. L. R. 34 Calc. 918

———s. 531—

—*Section applies to cases where Magistrate tries in respect of offences committed outside his jurisdiction.*—There is nothing in the language of s. 531 of the Code of Criminal Procedure to confine its operation to cases where offences committed within the jurisdiction of a Court are tried by such Court outside the limits of the local area of its jurisdiction. A finding, sentence or order regularly passed by a Court in the case of an offence committed outside its local area, cannot be set aside when no failure of justice has taken place. EMPEROR *v.* DORAISWAMY MUDALI (1906).
I. L. R. 30 Mad. 94

———s. 537—

See EMIGRATION ACT.
I. L. R. 31 Bom. 611

———s. 537—

—*Summons, issue of—Fresh summons issued on the same information—Irregularity in procedure.*—Where on an information a summons is issued to the accused, and owing to its disclosing no offence, a fresh summons is issued without any fresh or supplemental information, the error, omission or irregularity in the fresh summons is not sufficient, under s. 537 of the Criminal Procedure Code, to upset the finding and sentence unless it has in *fact* occasioned "a failure of justice," that is, unless

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*concluded.*

it has unfairly affected the accused's defence on the merits. EMPEROR *v.* JEEVANJI (1907).
I. L. R. 31 Bom. 611

CRIMINAL PROCEEDINGS.

———stay of—

See HIGH COURT, POWER OF.
I. L. R. 30 Mad. 226

CRIMINAL REVISIONAL JURISDICTION.

See HIGH COURT, JURISDICTION OF.
I. L. R. 34 Calc. 30

See JURISDICTION.

CRIMINAL TRESPASS.

1.—*Indian Penal Code (Act XLV of 1860), s. 447—Trespass upon land used as a pathway—Question of title to the land.*—In a case brought against the accused for trespass upon land used by the complainant as a pathway, when a question of title to the land is raised between the parties, the accused cannot be convicted under s. 447, Criminal Procedure Code, merely on the finding that the complainant has been using the pathway for more than six months, the question of title being left undecided. RABI LOCHAN *v.* PURNA CHANDRA DAY (1906) . . . . **11 C. W. N. 171**

2.—*Mischief—Claim of title by the accused to the land—Indian Penal Code (Act XLV of 1860), ss. 447 and 426—Dispute of a civil nature—Criminal Procedure Code (Act V of 1898), s. 522—Order giving possession—Dispossession by show of force.*—Where it was found that the complainant was all along in possession of a plot of land which he had sowed with paddy and the accused had failed in certain previous proceedings before the Assistant Superintendent of the Survey to get this plot included in his holding: *Held*, that the accused's going upon the land with a body of men and ploughing up the paddy seedlings in spite of the remonstrances of the complainant's servants constituted offences under ss. 447 and 426, Indian Penal Code, even though he did so under a claim of title to the land. That under the circumstances the fact that the accused set up a title to the land did not make the case against him one of a civil nature, and take it outside the jurisdiction of a Criminal Court. *Semble*: Under s. 522, Criminal Procedure Code, whenever an accused is convicted of an offence attended by show of force, the Court has the power to order the person who has been dispossessed by the accused of any immoveable property by such show of criminal force to be restored to the possession of the same. *Ram Chandra Boral* v. *Jityandria, I. L. R. 25 Calc. 434*, and *Ishan Chandra Kalla* v. *Dina Nath Badhak*,

CRIMINAL TRESPASS—*concluded.*

I. L. R. 27 Calc. 174, doubted. CHHAKOO MONDAL *v.* EMPEROR (1906) . . **11 C. W. N. 467**

CRUELTY.

See HINDU LAW—HUSBAND AND WIFE—RESTITUTION OF CONJUGAL RIGHTS.
I. L. R. 34 Calc. 971

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See ADOPTION . . **11 C. W. N. 147**

See HINDU LAW—ADOPTION.
I. L. R. 29 All. 109, 495

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I. L. R. 31 Bom. 366

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I. L. R. 34 Calc. 516

See OCCUPANCY HOLDING.
11 C. W. N. 83

See PRE-EMPTION.
I. L. R. 29 All. 295

—Evidence Act (I of 1872), ss. 13 (a), 32 (7)—Document, statement in—Admissibility against person not a party to it—Statement of deceased person—Right or custom, evidence of—Nakdi or bhaoli rent.—To prove or disprove a right or custom, it is not enough to adduce evidence of a transaction in which or in the course of which the right or custom was asserted or denied. The transaction will be relevant under s. 13, cl. (*a*) of the Evidence Act, if it be one by which the right or custom was asserted or denied. When the question was whether a tenant held lands under the *nakdi* or *bhaoli* system of rent and the Court based its decision on a statement contained in a *hebanama* executed by the deceased grandfather of the tenant: *Held,* that the *hebanama* was not admissible in evidence under s. 32 (7) read with s. 13, cl. (*a*) of the Evidence Act. BANSHI SINGH *v.* MIR AMIR ALI (1907). . **11 C. W. N. 703**

CUSTOM AND USAGE.

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DAMAGES.

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See NEGLIGENCE.

See RAILWAY COMPANY.

1. SUIT FOR DAMAGES.

(*a*) BREACH OF CONTRACT.

1.—*Carriers—Contract to carry partly by river and partly by land—Liability of carriers—Damages—Divisible contract—Carriers Act (III of 1865), ss. 3 to 5, 8—Railways Act (IX of 1890), s. 75—Excepted articles—Misdescription of goods.*—In a suit for damages for loss of goods carried partly in steamers of one company and partly by trains of another, the plaintiff failed to declare the value and description of the goods as required under the provisions of the Carriers Act and the Railways Act:—*Held,* that so far as the journey is by river, the Steamer Company is entitled, as regards the acts of its agents and servants, to the protection afforded by the provisions of the Carriers Act, and so far as the journey is by rail, it is similarly entitled to claim the protection afforded by the Railways Act. *Le Conteur* v. *The London and South-Western Railway Company, L. R. 1 Q. B. 54,* and *Baxendale* v *The Great Eastern Railway Company, 38 L. J. Q. B. 137,* referred to. NARANG RAI AGARWALLA *v.* RIVERS STEAM NAVIGATION COMPANY, LD. (1907).
I. L. R. 34 Calc. 419

2.—*Damages, suit for—Wrongful dismissal—Calcutta Municipal Act (B. C. III of 1899), ss. 15, 63 to 65—Chairman, power of, to appoint officers on salaries below R200 - General Committee, annual sanction by—Ultra vires.*—The provisions of s. 15 of the Calcutta Municipal Act do not apply to the appointment of municipal officers and servants whose appointments are expressly provided for by Chapter VI of the Act. Under s. 65 of the Act, the Chairman may appoint officers and servants on a salary below R200 a month, but such appointment is subject to an annual sanction by the General Committee; any appointment made outside the terms authorised by the section is *ultra vires.* KEDAR NATH BHANDARY *v.* THE CORPORATION OF CALCUTTA (1907).
I. L. R. 34 Calc. 863

(*b*) TORT.

3.—*False imprisonment—Suit for damages—Cause of action—Defendant not the actual prosecutor—Suit not maintainable.*—*A* having been badly beaten was carried to a police station where he named *X* and others as the persons who had attacked him. The police, after making the usual investigation, arrested the persons named by *A* and sent them before a Magistrate, who com-

DAMAGES—*continued.*

mitted them all to the Court of Session. The result of the trial was that the accused were all acquitted. *Held*, that no suit for damages for false imprisonment would under these circumstances lie against *A*. *Narasinga Row* v. *Muthaya Pillai*, *I. L. R. 26 Mad. 362*, followed. BALBHADDAR PANDE *v.* BASDEO PANDE (1906) . **I. L. R. 29 All. 44**

4.—*Damages for loss of reputation caused by defaming a wife—Suit for slander brought by a husband whether maintainable—Special damages—Cause of action.*—*A* instituted a suit against *B* for defamation. The words used alleged unchastity on the part of *A*'s wife. *A* alleged (*a*) special damage, (*b*) that the words were defamatory in themselves, (*c*) that he himself was defamed and was therefore entitled to sue. *Held*, that the words used defamed *A* as well as his wife and therefore *A* could maintain an action. *Held*, further, that the words used by *B* were defamatory in themselves and did not amount to mere verbal abuse and that therefore *A* was entitled to damages without proving special damage. *Girish Chunder Mitter* v. *Jhatadhari Sadukhan*, *I. L. R. 26 Calc. 653*, distinguished. *Ibin Hosein* v. *Haidar*, *I. L. R. 12 Calc. 109*; *Trailokha Nath Ghose* v. *Chundra Nath Dutt*, *I. L. R. 12 Calc. 424*; *Jogeswar Sarma* v. *Dinaram Sarma*, *3 C. L. J. 140*; and *Parvathi* v. *Mannar*, *I. L. R. 8 Mad. 175*, referred to. *Held* also, that the cause of action having arisen in the mofussil the suit was not governed by the rule laid down in *Bhooni Moni Dossi* v. *Natobar Biswas*, *I. L. R. 28 Calc. 452*. SUKKAN TELI *v.* BIPAD TELI (1906).

I. L. R. 34 Calc. 48

5.—*Damages, suit for—Detention of goods—Collector of Customs, powers of—Counterfeit trade mark—False trade-description—Damages, suit for—Sea Customs Act (VII of 1878), ss. 18, 19A—Merchandise Marks Act (IV of 1889), ss. 10, 11—Indian Penal Code (Act XLV of 1860), ss. 28, 480.*—It is the duty of the Collector of Customs as representing the Government to stop from being brought into British India, goods coming within the specification mentioned in s. 18 of the Sea Customs Act, 1878, as amended by the Merchandise Marks Act, 1889, *inter alia* goods having applied thereto a counterfeit trade-mark within the meaning of the Indian Penal Code or a false trade description within the meaning of the Indian Merchandise Marks Act, 1889. The Collector has power to detain such goods although no regulations have been framed by the Governor General in Council under s. 19A (*2*) of the Sea Customs Act, 1878, as amended by the Merchandise Marks Act, 1889. NEMI CHAND *v.* SECRETARY OF STATE FOR INDIA (1907).

I. L. R. 34 Calc. 511

6.—*Damages for injuries on railway—Negligence—Accident.*—The plaintiff sued the defendants, a Railway Company, for damages for injuries sustained by him when alighting from a carriage which overshot the platform of a station at night, and the evidence on the question of what light there was, either natural or artificial, on the night in question being conflicting, it was suggested during the hearing

DAMAGES—*continued.*

of the case on appeal and agreed to by the counsel for the parties that the Judges should visit the scene of the accident under conditions approximating as nearly as possible to those which prevailed when the plaintiff met with his injuries. This was done, the Judges and the legal advisers of the parties went to the station where a presentation of the scene and events of the accident was gone through by which the Judges were enabled to make a thorough investigation of the material conditions accompanying the accident. They formed their own opinion on the question of the sufficiency or otherwise of the light, and gave judgment in accordance with them, reversing the decision of the Court which tried the case. *Held*, that such procedure was illegal. The result of it was that the appeal was decided not on the testimony given at the trial as to what took place on the night of the accident, but by the Judges' observation of what they saw on another night altogether; and the decision based on it was set aside, the judgment of the first Court being restored. KESSOWJI ISSUR *v.* GREAT INDIAN PENINSULA RAILWAY COMPANY (1907).

I. L. R. 31 Bom. 381; L. R. 34 I. A. 115

2. MEASURE AND ASSESSMENT OF DAMAGES.

7.—*Compensation—Land Acquisition Act (I of 1894), ss. 9, 12 and 18—Notice—Irregularity in the notice, effect of—Valid award, requirements of—Ferry—Compensation for a ferry—Railways Act (IX of 1890), s. 10, sub-s. (2)—Limitation Act (XV of 1877), Sch. II, Art. 120—Damages, measure of.*—Where notice under s. 9 of the Land Acquisition Act does not contain the material facts, which would enable the landowner to identify the land intended to be taken up, and where the land to be acquired is affected with a franchise, the franchise is not described, and the notice fixes less than the prescribed time to prefer claims, there being irregularities, a suit for damages for permanent injury to a ferry caused by acquisition under the Land Acquisition Act, is maintainable in the Civil Court, notwithstanding an award has been made by the Deputy Collector, not allowing any compensation for the ferry, as it was not claimed even after a special notice. Sub-s. (2) of s. 10 of the Railways Act does not bar a suit for compensation in the Civil Court, when the Collector refuses to adjudicate upon the claim put forward by the owner. A suit will lie in the Civil Court in respect of claim for damages, which could not be foreseen at the time of the acquisition proceedings. A suit to recover compensation for land acquired, instituted on the refusal of the Collector to award any compensation under the Land Acquisition Act, is governed by Art. 120 of Schedule II of the Limitation Act, the right to sue accruing either from the date of the acquisition or the refusal by the Collector to award compensation. The mere construction of a railway bridge across a river, whereby the profits of the ferry are reduced, does not entitle the owner to claim damages; but where lands and both banks of the river, which

DAMAGES—*concluded.*

were used as landing places for the ferry, were acquired for the purpose of a railway bridge, and the access to the river and with it the exercise of the franchise was destroyed, the owner was entitled to compensation. The value of a ferry ought not to be determined by ascertaining the average profits at the date of the acquisition by regarding it as an invariable quantity and by taking a number of years' purchase. The damages ought to be calculated on the basis of the average profits from the ferry. RAMESWAR SINGH *v.* SECRETARY OF STATE FOR INDIA (1907) . . I. L. R. 34 Calc. 470

DARKHAST RULES.

—Darkhast Rule 14—Jurisdiction of Civil Courts—Registry under rule 14 only conditional—Civil Courts can interfere only when public servant acts outside his authority.—Under rule 14 of the Darkhast rules, the registry by the Tahsildar and the original grant are subject to the result of any appeal that might be admitted by the Deputy Collector. Civil Courts have no jurisdiction to question the validity of acts done by Government officers when they act within the scope of their authority. The propriety of a decision by a Darkhast authority, original or appellate, acting within the scope of its powers cannot be a subject of investigation by the Civil Courts. MUTHUVEERA VANDAYAN *v.* THE SECRETARY OF STATE FOR INDIA (1906).
I. L. R. 30 Mad. 270

DARPATNI TENURE.

See LIMITATION. I. L. R. 34 Calc. 711

DAUGHTER.

See HINDU LAW. I. L. R. 31 Bom. 495

DEATH.

——presumption of—

—Evidence Act (I of 1872), s. 108—Presumption of death of person not heard of for more than seven years—Time of death, no presumption as to.—The presumption that arises under s. 108 of the Evidence Act is that a man who has not been heard of for seven years is dead at the time the question is raised and not that he died at some antecedent date. It is incumbent on the party who alleges that a person died on a certain date to prove that fact by evidence. FANI BHUSAN BANERJEE *v.* SURJA KANT ROY CHOWDHURY (1907) . 11 C. W. N. 833

——sentence of—

—Age of the accused—Sentence.—Where the accused, a girl of 16 was held guilty of deliberately killing her husband by means of arsenic poison which she mixed up with the food, cooked and served up by herself to the husband: *Held,* that in consideration of her age she should be transported for life instead of suffering the extreme penalty of law. EMPEROR *v.* JASHA BEWA (1907).
11 C. W. N. 904

DEBTS.

See HINDU LAW.

DEBUTTER ESTATE.

See CIVIL PROCEDURE CODE, S. 244.
11 C. W. N. 145

See RECEIVER . . 11 C. W. N. 489

—Power of a shebait to bind the estate by compromise—Benefit of the estate.—Although it is not competent for a *shebait* to alienate endowed property by way of mortgage or sale, yet he is authorised to deal with the endowed property for its benefit and preservation and especially for the purpose of preventing it from hostile litigious attacks. *Juggessur Buttobyal* v. *Rajah Roodra Narain Roy, 12 W. R. 299; Prosunno Kumari Debya* v. *Golab Chand Baboo, L. R. 2 I. A. 145; Konwur Doorga Nath Roy* v. *Ram Chunder Sen, L. R. 4 I. A. 52; Sheo Shankar Gir* v. *Ram Shewak Chowdhri, I. L. R. 24 Calc. 77;* and *Parsotam Gir* v. *Dat Gir, I. L. R. 25 All. 296,* referred to. HOSSEIN ALI KHAN *v.* MAHANTA BHAGABAN DAS (1906). I. L. R. 34 Calc. 249

DECLARATION OF SALE OF ENTIRE ESTATE.

See SALE FOR ARREARS OF REVENUE.
I. L. R. 34 Calc. 381

DECLARATORY DECREE.

—Suit for declaration of right to receive fees as "Chowdhris" of certain bazars—Suit not maintainable.—The plaintiffs sued for a declaration that they were the "chowdhris" of the bazars in the villages Muhammadabad Ghona, Khairabad and Behna, and that the defendants were not the "chowdhris" of the said bazars and were not entitled to take chowdhris dues. *Held,* that such a suit was not maintainable. *Bhinuk Chowdhree* v. *The Collector of Jaunpur, 1867 All. H. C. 271; Beharee Lall* v. *Baboo, 1867 All. H. C. 80;* and *Ram Deehul* v. *Chukhoo, 1869 All. H. C. 291,* followed. BARSATI *v.* CHAMBU (1907) . . I. L. R. 29 All. 683

DECREE.

See APPEAL—EXECUTION OF DECREE.

See CIVIL PROCEDURE CODE.
I. L. R. 31 Bom. 128; 447

See CONSENT DECREE.

See DECLARATORY DECREE.

See DEKKHAN AGRICULTURISTS' RELIEF ACT . I. L. R. 31 Bom. 120

See EXECUTION OF DECREE.

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I. L. R. 31 Bom. 162

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DECREE—*continued.*

——against father—

See HINDU LAW. I. L. R. 34 Calc. 642

——ex parte—

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——form of—

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See TRANSFER OF PROPERTY ACT, ss. 92 AND 93 . . I. L. R. 29 All. 481

——for mesne profits—

See HINDU LAW—DEBTS.
11 C. W. N. 163

——for money—

See CIVIL PROCEDURE CODE.
I. L. R. 31 Bom. 308

——for rent—

See LANDLORD AND TENANT.
I. L. R. 34 Calc. 298

——obtained by fraud—

See LIMITATION. I. L. R. 34 Calc. 711

——on appeal—

See LIMITATION. I. L. R. 34 Calc. 874

——on private award—

See APPEAL . . 11 C. W. N. 220

——pending appeal—

See CIVIL PROCEDURE CODE, ss. 108, 560, 582 . . I. L. R. 30 Mad. 535

——transfer of—

See PRACTICE . I. L. R. 31 Bom. 5

—— validity of—

See EXECUTION OF DECREE.
I. L. R. 30 Mad. 26

—Mortgage—Bond—Undue influence—Decree on mortgage bonds in the form provided by ss. 86 and 88 of the Transfer of Property Act (IV of 1882)—Stipulations in bonds amount to penalties—Compound interest—Increased interest on default—Compensation for breach of contract—Interest after date fixed for payment, power to give—Interest at contract rate after such date. —Compound interest at a rate exceeding the rate of interest on the principal money, being in excess of and outside the ordinary and usual stipulation, may be regarded as in the nature of a penalty. Where a stipulation in a mortgage bond for increased interest on default is retrospective, and the increased interest runs from the date of the bond, and not merely from the date of the default, it is always to be construed as a penalty, because an additional money payment becomes in that case immediately payable by the mortgagor. But the increased interest is not therefore to be disallowed altogether; for by s. 74 of the Contract Act reasonable compensation not exceeding the amount of the penalty is to be received by the party complaining of the breach of the contract. Where two mortgage bonds were executed each providing for interest, compound interest, and on default increased interest from the respective dates of the execution of the bonds, and on the date of the execution of the second bond the amount due on the first bond with interest was included in the principal of the second bond; the High Court in a decree on the bonds held that the increased interest by way of compensation on the first bond should run only from the date of execution of the second bond, and that on the second bond should run only from the date of default on that bond, and allowed compound interest at the same rate only as that at which simple interest was stipulated for in the bond, and the Judicial Committee affirmed that decree. *Held*, also, that the decree of the High Court which was in the form provided by ss. 86 and 88 of the Transfer of Property Act (IV of 1882) was right in allowing interest after the time fixed for payment, until realization, at the Court rate of interest and not at the mortgage rate. The scheme and intention of the Transfer of Property Act was that a general account should be taken once for all, and an aggregate amount be stated in the decree for principal, interest and costs due on a fixed day, and that after the expiration of that day, if the property should not be redeemed, the matter should pass from the domain of contract to that of judgment, and the rights of the mortgagee should thenceforth depend, not on the contents of the bond, but on the directions in the decree. Neither of the cases *Rameswar Koer* v. *Mehdi Hossein Khan, L. R. 25 I. A. 179: I. L. R. 26 Calc. 39*; and *Maharaja of Bharatpur* v. *Kanno Dei, L. R. 28 I. A. 35: I. L. R. 23 All. 181*, is an authority for the contention that interest at the mortgage rate can be given after the date fixed for payment, until realization. In the former case the question was not raised, and in the latter case, although interest after the fixed date was given, it was not at the mortgage rate, but at the Court rate of interest. Ss. 86 and 88 of the Transfer of Property Act contain no directions for interest beyond the date to be fixed by the Court up to which the account is directed to be taken; but it has long been the uniform practice of the Calcutta High Court to give such interest, and the power to do so, whatever the source of it (and that is immaterial since the decision in *Maharaja of Bharatpur* v. *Kanno Dei, L. R. 28 I. A. 35: I. L. R. 23 All. 181*), must be considered as established. SUNDAR KOER v. RAI SHAM KRISHEN (1906).
I. L. R. 34 Calc. 150; L. R. 34 I. A. 9

DECREE-HOLDERS.

——rival—

See CIVIL PROCEDURE CODE, s. 244.
. . . . . 11 C. W. N. 433

DEED OF GIFT UNACCOMPANIED BY DELIVERY OF POSSESSION.

See TRANSFER OF PROPERTY ACT, s. 123.
I. L. R. 34 Calc. 853

DEFAMATION.

See DAMAGES, SUIT FOR.
I. L. R. 34 Calc. 48

See LIBEL.

1.—*No prosecution lies for, in respect of answers given by a party to questions asked by Court.*—It is contrary to public policy that a person bound to state the truth in answer to questions put to him by a Court should be liable to be prosecuted for defamation in respect of answers so given, though untrue and not given in good faith. *Manjaya v. Sesha Shetti, I. L. R. 11 Mad. 477*, followed. ALRAJA NAIDU, *In the matter of* (1906) . . . I. L. R. 30 Mad. 222

2.—*Penal Code (Act XLV of 1860), s. 500—Privileged communication—Bonâ fides—Social position of accused to be considered—Malice—Express malice.*—Where the accused told his friend *E* and subsequently at the instance of *E* wrote to the superior officer of the complainant to the effect that the complainant and the wife of *E* had been seen behaving on a certain night in such a manner and under such circumstances as to render unavoidable the conclusion that acts of impropriety took place between them and it was found that the accused honestly believed in the truth of the statements: *Held*, that the accused could not be convicted of an offence under s. 500, Indian Penal Code, unless express malice was proved by the prosecution. That though a person in a higher social position than the accused would have probably acted differently under the circumstances it did not follow that the accused was therefore actuated by malice in acting as he did. GRANT *v.* EMPEROR (1906) . . 11 C. W. N. 390

3.—*Indian Penal Code (Act XLV of 1860), s. 499, Exceptions 3, 6, 9, ss. 52, 500—Comment—Right of fair comment—Comment should be suggested by and confined to the work under review—Good faith, tests of—Malice, interpretation of the term.*—The word "malice" in the legal use of that term is not limited to hostility of feeling, but by virtue of its etymological origin, extends to any state of the mind which is wrong or faulty (whether evidenced in action by excess or defect) such as would be unjustifiable in the circumstances and incompatible with thoroughly innocent intentions. It is not necessary that such impropriety of feeling should in all cases be established by evidence extrinsic to the comment which is the subject of the complaint. For whether fair comment is to be regarded as falling under a branch of the law of privilege or not, it cannot excuse an injury arising, not from the mere act of criticism, but from a state of mind in the critic which is in itself unjustifiable and the excuse may be so forfeited either by reason of an evil intent in him, or by reason of mere recklessness in making an unwarrantable assertion. For then the comment

DEFAMATION—*continued.*

would not be fair comment at all. Apart from extrinsic evidence of malice, protection must be withheld even from what purports to be criticism, if it states as a fact to be inferred from the book criticised an imputation for which the book itself contains absolutely no foundation whatever. The right of fair comment involves two essentials, first that the imputation should be comment on the work criticised, and second that it should be "fair"—that is to say, that if it professes to be an inference drawn from the contents of that work, it must be an inference which it is possible to draw therefrom. "Good faith" requires not, indeed, logical infallibility but due care and attention. But how far erroneous actions or statements are to be imputed to want of due care and caution must, in each case, be considered with reference to the general circumstances and the capacity and intelligence of the person whose conduct is in question. It is only to be expected that the honest conclusions of a calm and philosophical mind may differ very largely from the honest conclusions of a person excited by sectarian zeal and untrained to habits of precise reasoning. At the same time it must be borne in mind that good faith in the formation or expression of an opinion, can afford no protection to an imputation which does not purport to be based on that which is the legitimate subject of public comment. The object of Exception 6 to s. 499 of the Indian Penal Code (Act XLV of 1860) is that the public should be aided by comment in its judgment of the public performance submitted to its judgment. Comment otherwise defamatory is justified on this ground alone. The comment must, therefore, make it clear to the public that decision is invited only on such evidence as is supplied by the public performance. It follows that an imputation on an author made by a critic without reference, express or implied, to the work under criticism, if in terms so general as to be capable of conveying an unfavourable impression of him apart from what appears in his work, cannot be justified by the critic on the ground that his intention was to base his imputation solely on the work reviewed, and that he had in his mind passages therein supporting the imputation. The responsibility of the critic is to be gauged by the effect which his comment is calculated to produce, and not by what he says was his intention. It is not enough that he should intend to form his opinion on the work before him: he is also bound in the words of the exceptions to express his opinion with due care and caution, and to give the public no ground for supposing that he is speaking of anything but the performance submitted to its judgment. EMPEROR *v.* ABDOOL WADOOD (1907) . . . I. L. R. 31 Bom. 293

4.—*Penal Code (Act XLV of 1860), s. 499—Indian Evidence Act, ss. 105 and 132—Witness—How far witness protected when giving evidence.*—If a witness whilst giving evidence makes a statement concerning any person which amount to defamation, he may be prosecuted under s. 499 of the Indian Penal Code in respect of such statement, and it lies upon him to show that the statement which he has made falls within one or other of the exceptions to s. 499 of the Code, or

DEFAMATION—*continued.*

that he is protected from prosecution by the proviso to s. 132 of the Indian Evidence Act, 1872. So *held* by KNOX, *Acting C.J.*, and AIKMAN, *J.* (RICHARDS, *J.*, *dissentiente*). *Baboo Gunnesh Dutt Singh* v. *Mugneeram Chowdhry*, *11 B. L. R. 321*, distinguished. *Bank of England* v. *Vagliano Brothers*, [*1891*] *A. C. 107*; *Norendra Nath Sircar* v. *Kamalbasini Dasi*, *L. R. 23 I. A. 18*; *Robinson* v. *Canadian Pacific Railway Company*, [*1892*] *A. C. 481*; *Queen* v. *Pursoram Doss*, *3 W. R. Cr. 45*; *Sealy* v. *Ram Narain Bose*, *4 W. R. Cr. 22*; *Manjaya* v. *Sesha Shetti*, *I. L. R. 11 Mad. 477*; *Queen-Empress* v. *Babaji*, *I. L. R. 17 Bom. 127*; *Queen-Empress* v. *Balkrishna Vithal*, *I. L. R. 17 Bom. 573*; *Bhikumber Singh* v. *Becharam Sircar*, *I. L. R. 15 Calc. 264*; *Woolfun Bibi* v. *Jesarath Sheikh*, *I. L. R. 27 Calc. 262*; *Dawan Singh* v. *Mahip Singh*, *I. L. R. 10 All. 425*; and *Queen-Empress* v. *Gajadhur*, *Weekly Notes*, *1890*, *170*, referred to. *Ganesh Dutt Singh* v. *Mugneeram Chowdhry*, *11 B. L. R. 321*, distinguished. *Green* v. *Delanney*, *14 W. R. Cr. 27*; *Queen-Empress* v. *Balkrishna Vithal*, *I. L. R. 17 Bom. 573*; *In re Nagarji Trikamji*, *I. L. R. 19 Bom. 340*; *Angada Ram Shaha* v. *Nemai Chand Shaha*, *I. L. R. 23 Calc. 867*; *Abdul Hakim* v. *Tej Chandra Mukerji*, *I. L. R. 3 All. 815*; *Bank of England* v. *Vagliano Brothers*, [*1891*] *A. C. 107*; and *Norendra Nath Sircar* v. *Kamalbasini Dasi*, *L. R. 23 I. A. 18*, referred to by AIKMIN, *J.* *Per* RICHARDS, *J.*—A prosecution for defamation under s. 499 of the Indian Penal Code will not lie against a witness in respect of any statement made by him in the course of giving evidence, even if such statement may be not relevant to the matter under inquiry. *Baboo Gunnesh Dutt Singh* v. *Mugneeram Chowdhry*, *11 B. L. R. 321*, followed. *Dawkins* v. *Lord Rokeby*, *L. R. 7 H. L. 744*; *Abdul Hakim* v. *Tej Chandar Mukerji*, *I. L. R. 3 All. 815*; and *Isuri Prasad Singh* v. *Unrao Singh*, *I. L. R. 22 All. 234*, referred to. EMPEROR *v.* GANGA PRASAD (1907).

I. L. R. 29 All. 685

5.—*Damages for loss of reputation caused by defaming a wife—Suit for slander brought by a husband whether maintainable—Special damages—Cause of action.*—*A* instituted a suit against *B* for defamation. The words used alleged unchastity on the part of *A*'s wife. *A* alleged (*a*) special damage, (*b*) that the words were defamatory in themselves, (*c*) that he himself was defamed and was therefore entitled to sue. *Held*, that the words used defamed *A* as well as his wife and therefore *A* could maintain an action. *Held*, further, that the words used by *B* were defamatory in themselves and did not amount to mere verbal abuse and that therefore *A* was entitled to damages without proving special damage. *Girish Chunder Mitter* v. *Jhatadhari Sadukhan*, *I. L. R. 26 Calc. 653*, distinguished. *Ibin Hosein* v. *Haidar*, *I. L. R. 12 Calc. 109*; *Trailokha Nath Ghose* v. *Chundra Nath Dutt*, *I. L. R. 12 Calc. 424*; *Jogeswar Sarma* v. *Dinaram Sarma*, *3 C. L. J. 140*, and *Parvathi* v.

DEFAMATION—*concluded.*

Mannar, *I. L. R. 8 Mad. 175*, referred to. *Held*, also, that the cause of action having arisen in the mofussil the suit was not governed by the rule laid down in *Bhooni Moni Dossi* v. *Natobar Biswas*, *I. L. R. 28 Calc. 452*. SUKKAN TELI *v.* BIPAD TELI (1906) . . . **I. L. R. 34 Calc. 48**

DEFAULT.

See DISMISSAL FOR DEFAULT.

DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879).

——ss. 12, 13 and 71A—

—Application of the sections to a suit instituted before the Act came into force in a particular district—Retrospective effect—Taking an account between parties.—Ss. 13 and 71A of the Dekkhan Agriculturists' Relief Act (XVII of 1879) have no retrospective effect. S. 12 of the Act is retrospective only so far as it regulates procedure. That part of the section which relates to taking an account between the parties is not retrospective. FATMA BIBI *v.* GANESH (1907).

I. L. R. 31 Bom. 630

——s. 15B, sub-s. (*1*)—

—Suit on mortgage—Decree—Payment of interest not compulsory—Discretion in Court.—The terms of sub-s. (*1*) of s. 15B of the Dekkhan Agriculturists' Relief Act (XVII of 1879) do not make it compulsory on the Court to award interest. There is a discretion in the Court as to whether or not interest should be allowed. NATHU LAXMAN *v.* VAZIR (1907) . . **I. L. R. 31 Bom. 450**

—— s. 15 (*b*) –

—Extension of the Act to the district—Decree on mortgage for sale—Order for sale in execution—Application for payment by instalments—Decree nisi—Decree absolute.—In execution of a decree for the sale of mortgaged property a portion of the property was sold and the rest was ordered to be sold by the Collector to whom the decree was transferred for execution. In the meanwhile the Dekkhan Agriculturists' Relief Act (Act XVII of 1879) having been made applicable to the district, the mortgagor applied to the Court for payment by instalments under s. 15 (*b*) of the Act. The application was refused by the Court on the ground that the decree having been transferred to the Collector, it had no power to grant instalments. *Held* on appeal by the mortgagor, reversing the order of the lower Court, that payment by instalments could be decreed. The application for payment by instalments having been made within one month from the time the Dekkhan Agriculturists' Relief Act (Act XVII of 1879) was made applicable, no question of limitation arose. *Per* RUSSELL, *Acting C.J.*:—The term 'decree' in s. 15 (*b*) of the Dekkhan Agriculturists' Relief Act (Act XVII of 1879) refers to 'decree *nisi*' as well as to 'decree absolute.' *Per* BEAMAN, *J.*

DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879)—*concluded.*

There is a perceptible difference between the case of a 'decree absolute' for sale and for foreclosure. Theoretically the latter leaves nothing more to be done; there is nothing left to be paid by any one, no further step to be taken by the creditor or the Court. All is over. But that is not so when a decree for sale is made absolute. The amount for which the decree was passed is still payable, and though, strictly speaking, it may not be payable by the "mortgagor," it is payable out of what, but for the decree absolute, would be still his property. MANCHERJI *v.* THAKORDAS (1906) . . I. L. R. 31 Bom. 120

DELAY.

——in applying for sanction—

See SANCTION FOR PROSECUTION.
11 C. W. N. 119

——in presenting appeal—

See LIMITATION ACT, s. 5.
I. L. R. 31 Bom. 33

—— in suit—

See EJECTMENT, SUIT FOR.
I. L. R. 34 Calc. 396

DEMOLITION OF BUILDING.

See CALCUTTA MUNICIPAL ACT (BENG. III OF 1899), ss. 449, 450, 452, 579.
I. L. R. 34 Calc. 341

DEPOSIT.

See LIMITATION ACT (XV OF 1877), ss. 19 AND 20, SCH. II, ARTS. 59, 60.
I. L. R. 29 All. 773

——in Court—

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), ss. 244, 291. 11 C. W. N. 495

—— of rent in Court—

See INTEREST. . 11 C. W. N. 983; I. L. R. 35 Calc. 34

DEPUTY COMMISSIONER.

See GUARDIAN . I. L. R. 34 Calc. 569

DETENTION IN POLICE CUSTODY.

See POLICE CUSTODY. 11 C. W. N. 554

DETENTION OF GOODS.

See DAMAGES, SUIT FOR.
I. L. R. 34 Calc. 51

DEVOLUTION.

See HINDU LAW. I. L. R. 31 Bom. 453

'DHARMAM,' BEQUEST TO.

See HINDU LAW—WILL.
I. L. R. 30 Mad. 340

DIGWARI TENURE.

—Right of a Digwar to grant mokurrari lease —Sub-soil rights—Suit by landlord—Government whether a necessary party.—The position of Digwars of Ghat Tasra, in Manbhum, is analogous to that of the Ghatwals of Birbhum. *Bukronath Singh* v. *Nilmoni Singh, I. L. R. 5 Calc. 389,* and *Nilmani Singh Deo* v. *Bakranath Singh, I. L. R. 9 Calc. 187,* referred to. The tenure consisting of mouzahs Tasra and Raharaband, has all along been a Digwari tenure, ancient and hereditary, held subject to the payment of a fixed rent to the landlord and on condition of the performance of certain police or public services, for the due discharge of which the holder has been responsible to the Government which alone has exercised the power of appointment to, or dismissal from, the office. A Digwari tenure-holder of the said two mouzahs granted a *mokurrari* lease of all the surface and sub-soil rights in them. Upon a suit by the landlord, without making the Government a party, for a declaration that the mineral rights in these mouzahs belonged to him as landlord, and that the defendant had no right to grant such a lease:—*Held,* that the Digwar as holder of a permanent tenure, possessed all under-ground rights including mining rights, and that therefore the plaintiff was not entitled to the declaration prayed for. *Held,* further, that Government was a necessary party to the suit. BROJANATH BOSE *v.* DURGA PROSAD SINGH (1907).
I. L. R. 34 Calc. 753

DISCRETION OF COURT.

See LIMITATION ACT, s. 5.
I. L. R. 31 Bom. 33

See DEKKHAN AGRICULTURISTS' RELIEF ACT. . . I. L. R. 31 Bom. 450

DISCRETION OF MAGISTRATE.

See CALCUTTA MUNICIPAL ACT (BENGAL III OF 1899). I. L. R. 34 Calc. 341

DISMISSAL FOR DEFAULT.

See LIMITATION. I. L. R. 34 Calc. 491

1.—*Re-admission—Civil Procedure Code (Act XIV of 1882), ss. 556, 558.*—An application by a counsel or pleader, who is instructed only to apply for an adjournment, which is refused, is not an "appearance" within the meaning of the Code of Civil Procedure. When in such circumstances an appeal is dismissed, the dismissal is one for default under s. 556 of the Code of Civil Procedure, entitling the appellant to apply for re-admission under s. 558 of the Code. *Cooke* v. *The Equitable Coal Company, 8 C. W. N. 621,* approved. *Watson & Co.* v.

DISMISSAL FOR DEFAULT—*concluded.*

Ambika Dasi, 4 C. W. N. 237, overruled. SATISH CHANDRA MUKERJEE *v.* AHARA PRASAD MUKERJEE (1907) . . . . I. L. R. 34 Calc. 403

2.—*Civil Procedure Code (Act XIV of 1882), ss. 102, 103 and 157—Dismissal of suits—When plaintiff's pleader declines to proceed it is dismissal for default within s. 102—Discretion in restoring such suit to file not to be interfered with on revision except on strong grounds.*—On the day in which a suit was posted for hearing, the plaintiff's pleader appeared and applied for an adjournment which was refused. The pleader declined to proceed with the suit, and the plaintiff, who was present in Court, took no steps. Thereupon the suit was dismissed in these words: "The plaintiff's pleader said that he was not willing to proceed. So the suit was dismissed." The plaintiff subsequently applied for restoration under ss. 103 and 157 and the suit was restored to the file:—*Held*, that the dismissal of the suit under the above circumstances was a dismissal for default under s. 102, and that the order restoring the suit was rightly passed. A plaintiff 'fails to appear' within the meaning of s. 102, when his pleader declines to proceed with the suit and it makes no difference that the party himself was present in Court:—*Held*, also, that, under the circumstances, the order of restoration should not have been interfered with on revision. GOPALA ROW *v.* MARIA SUSAYA PILLAI (1906).
I. L. R. 30 Mad. 274

3.—*Restoration—Sufficient cause.*—Where the pleader engaged by the former could not attend owing to his wife's illness, and another gentleman who had agreed to take up the case as his substitute was unavoidably prevented from attending the Court, and there being three cases on the day's list above the case, the party himself did not anticipate that the case would be called at an early hour and so failed to be present with his witnesses at the time when the case was called: *Held*, that these facts combined made out a case of sufficient cause for the re-admission of the case but only subject to conditions. The case was restored on condition of the defaulting party (appellant) paying beforehand to his opponents the costs of the hearing on the day on which the case was dismissed, the subsequent costs of the application under s. 103, C. P. C., and the costs of the appeal before the High Court. BEHARY LAL SUR *v.* NANDA LAL GOSWAMI (1907).
11 C. W. N. 430

DISMISSAL OF SUIT.

See RECEIVER. I. L.R. 34 Calc. 336

—*Civil Procedure Code (Act XIV of 1882), ss. 102, 103, 157 and 158—Adjourned hearing—Want of instructions to the pleader—Dismissal of suit for want of prosecution—Remedy.*—At an adjourned hearing of a suit, witnesses on behalf of the plaintiff not being in attendance, the plaintiff applied for issue of a warrant against one of them. The Court refused the application, and the pleader for the plaintiff thereupon intimated that he had

DISMISSAL OF SUIT—*concluded.*

no further instructions to appear; and the suit was dismissed. Subsequently an application was made under s. 103 of the Civil Procedure Code to set aside the order of dismissal. On objection by the defendant that, inasmuch as the dismissal was under s. 158 of the Code, the remedy of the plaintiff was by way of an application for review: *Held*, that the suit was dismissed under s. 102 read with s. 157, and that the application was maintainable under s. 103 of the Code of Civil Procedure. MARIANNISSA *v.* RAMKALPA GORAIN (1907).
I. L. R. 34 Calc. 235

DISPOSAL OF PROPERTY BY MAGISTRATE.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 517.
I. L. R. 34 Calc. 347

DISPOSSESSION.

See BENGAL TENANCY ACT.

See POSSESSION, SUIT FOR.

See TRANSFER OF PROPERTY ACT, S. 119.
I. L. R. 30 Mad. 316

DISTRICT BOARD.

——power of—

See LOCAL SELF-GOVERNMENT ACT (BENG. III OF 1885), SS. 78, 139.
11 C. W. N. 1099

DISTRICT JUDGE.

See GUARDIAN . I. L. R. 34 Calc. 569

——jurisdiction of—

See HINDU LAW—INHERITANCE.
I. L. R. 34 Calc. 929

DISTRICT REGISTRAR.

—*Civil Procedure Code, s. 622—District Registrar not a 'Court' within the meaning of s. 622.*—A District Registrar is a Court within the meaning of s. 622 of the Code of Civil Procedure, and the High Court cannot interfere with his proceedings under that section. *Atchayya v Ganayya. I. L. R. 15 Mad. 138*, distinguished. MANAVALA GOUNDAN *v.* KUMARAPPA REDDY (1907).
I. L. R. 30 Mad. 326

DIVORCE.

See MAHOMEDAN LAW.
I. L. R. 31 Bom. 264

DOCUMENT.

See INSPECTION OF DOCUMENTS.

DOCUMENT—*concluded.*

——admitted without objection in first Court—

See EVIDENCE, ADMISSIBILITY OF.
I. L. R. 34 Calc. 1059

——30 years or more old—

See PAROL EVIDENCE.
I. L. R. 30 Mad. 386

——construction of—

See CONTRACT . I. L. R. 29 All. 151
See HINDU LAW. . I. L. R. 29 All. 217
See LANDLORD AND TENANT.
I. L. R. 29 All. 203

DOWER.

See MAHOMEDAN LAW.

DRAINAGE CHARGES.

——recovery of—

See BENGAL DRAINAGE ACT, ss. 42, 44.
11 C. W. N. 57

DYING DECLARATION.

——admissibility of—

—A dying declaration recorded in the absence of the accused, and by a Magistrate other than the inquiring Magistrate, is not admissible until it is proved by the recording officer. PANCHU DAS *v.* EMPEROR (1907) . . I. L. R. 34 Calc. 698

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EASEMENT.

See ALTERNATIVE CLAIM.
I. L. R. 34 Calc. 51
See EASEMENTS ACT (V OF 1882).
See PRESCRIPTION.

1.—*Right of privacy—Defendant not allowed to give himself increased facilities for overlooking plaintiffs' zenana.—Held,* that the fact that the plaintiffs' zenana house might be to some extent overlooked by persons standing on the roof of the defendants' house was no justification for the defendants opening fresh doors or windows in the wall of their upper storey looking towards the plaintiffs' house, whereby the plaintiffs' house might be overlooked without the person inspecting it being visible to the occupants of that house. *Gokul Prasad* v. *Radho, I. L. R. 10 All. 358,* referred to. ABDUL RAHMAN *v.* BHAGWAN DAS (1907).
I. L. R. 29 All. 582

2.—*Right to unobstructed view of shop.—Held,* that no action will lie for the removal of erections in front of a shop merely on the ground that such erections obstruct the view which passers-by formerly had of the shop. *Smith* v. *Owen, 35 L. J. Ch. 317,* and *Butt* v. *Imperial Gas Company, L. R. 2 Ch. 158,* followed. GOPI NATH *v.* MUNNO (1906) . . . I. L. R. 29 All. 22

3.—*Tenant—Easements Act (V of 1882), s. 60—Landlord and tenant—Occupation of building site in abadi—Erection of permanent building—Suit for ejectment* — The defendants were found on the evidence to be tenants-at-will of the plaintiff of land in the abadi, the land having been allotted to their ancestors on condition of their rendering service as patwaris. The defendants had ceased to perform the duties of patwaris, but still occupied the land, and had built houses thereon of a permanent character. *Held* on suit by the zamindar to eject the defendants, who had denied the zamindar's title, that the principles laid down in *Beni Ram* v. *Kundan Lal, I. L. R. 21 All. 496,* applied, and that there was no such conduct on the part of the zamindar as would justify the inference that she had contracted that the right of tenancy under which the defendants originally obtained possession of the land should be changed into a permanent right of occupation; neither could the defendants pray in aid s. 60 of the Indian Easements Act, 1882. *Held,* also, that the acquisition pending the suit by one of the defendants of a share in the village in which the land in suit was situate did not give the defendants any title to retain possession of the site in the abadi from which the plaintiff was suing to eject them BUDH SINGH *v.* PARBATI (1907) . . I. L. R. 29 All. 652

EASEMENTS ACT (V OF 1882).

——s. 4—

—*Easement—Right of privacy—Suit by occupier of house* —Not only the owner, but the lessee or other person in lawful possession of premises may maintain an action if his right of privacy is interfered with. *Gokal Prasad* v. *Radho, I. L. R. 10 All. 358,* referred to. KUNDAN *v.* BIDHI CHAND (1906) . . . I. L. R. 29 All. 64

——ss. 15, 28 (c)—

—*Easement—Prescriptive right to light and air—Infringement of right—Actual damage.*— Where a plaintiff is claiming relief upon the ground that his prescriptive right to the passage of light and air to a certain window has been interfered with, it is enough to show that the right has in fact been interfered with. The plaintiff is not obliged to go further and show that he has suffered actual damage thereby *Colls* v. *Home and Colonial Stores, Ld.,* [*1904*] *A. C. 179,* and *Kine* v. *Jolly,* [*1905*] *1 Ch. 480,* not applied. *Nandkishor Balgovan* v. *Bhagubhai Pranvallabhdas, I. L. R. 8 Bom. 95* referred to. KUNNI LAL *v.* KUNDAN BIBI (1907) . . . I. L. R. 29 All. 571

——s. 60—

See EASEMENT . I. L. R. 29 All. 652
See LANDLORD AND TENANT.
I. L. R. 29 All. 133

EJECTMENT.

See LANDLORD AND TENANT.

See LEASE, CONSTRUCTION OF.
11 C. W. N. 809

——suit for—

See LANDLORD AND TENANT.
I. L. R. 34 Calc. 902 ; L. R. 34 I. A. 160

See PRESIDENCY SMALL CAUSE COURTS ACT . . **I. L. R. 31 Bom. 259**

1.—*Ejectment of under-raiyat—Delay in suing—"Holding over," presumption of—overt act—Bengal Tenancy Act (VIII of 1885), s. 49.* —After the expiry of a written lease, a mere delay in the institution of a suit by the lessor for ejectment of the lessee without notice to quit, is no reason for dismissal of the suit on the ground that the lessee was allowed to 'hold over.' RATAN LAL GIR *v.* FARSHI BIBI (1907).
I. L. R. 34 Calc. 396

2.—*Agra Tenancy Act (Local II of 1901), s. 199—Suit for ejectment in Revenue Court—Omission on part of defendant to plead title in himself.—Res judicata.*—In a suit for ejectment under Act No. II of 1901, the defendants did not plead their own title to the plot in suit, and in fact did not oppose the suit for ejectment. *Held*, that a subsequent suit brought in a Civil Court by the then defendants for proprietary possession of the same plot was barred by the principle of *res judicata*. *Rani Kishori* v. *Raja Ram, Weekly Notes, 1904, 109; Ashraf-un-nissa* v. *Ali Ahmed, Weekly Notes, 1904, 141,* and *Inayat Ali Khan* v. *Murad Ali Khan, I. L. R. 27 All. 569,* distinguished. *Salig Dube* v. *Deoki Dube, Weekly Notes (1907) 1,* and *Beni Pande* v. *Raja Kausal Kishore Prasad Mal Bahadur, I. L. R. 29 All. 160,* referred to. *Gokul Mandar* v. *Pudmanund Singh, I. L. R. 29 Calc. 707,* discussed. BIHARI *v.* SHEOBALAK (1907). . **I. L. R. 29 All. 601**

3.—*Limitation Act (XV of 1877), Sch. II, Arts. 139, 113—Lease—Forfeiture—Suit for ejectment—Limitation*—.A lease granted for the reclamation of certain jungle lands provided that the lessee should hold the lands rent-free for six years and that in the beginning of the seventh year he should cause the lands to be measured and a settlement of rent made in respect of the reclaimed lands —failing which the landlord would be entitled to possession. *Held*, that a suit by the lessor for ejectment on the ground of the lessee's failure to comply with the above-mentioned provision in the lease was governed by Art. 143, and not by Art. 139, Sch. II, of the Limitation Act. GOOHI SHEIKH *v.* H. MATHEWSON (1907) . **11 C. W. N. 661**

4.—*Persons in actual possession necessary parties.*—In a suit in ejectment the persons in actual possession need to be joined as parties. BANUBI *v.* NARSINGRAO (1906).
I. L. R. 31 Bom. 250

ELECTION.

See BOMBAY MUNICIPAL ACT (BOM. III OF 1888), S. 33.
I. L. R. 31 Bom. 604

See MISJOINDER OF PLAINTIFFS.
I. L. R. 34 Calc. 662

See MUNICIPALITY.
I. L. R. 31 Bom. 37

—— reversioner's right of—

See HINDU LAW—WIDOW.
I. L. R. 34 Calc. 329

——validity of—

See JURISDICTION OF CIVIL COURTS.

—City of Bombay Municipal Act (Bom. Act III of 1888), s. 33—Election of Councillor, validity of—Applicant's right to question election—Chief Judge of Small Cause Court has sole jurisdiction to try suits relating to election petitions—Jurisdiction of High Court—Civil Procedure Code (Act XIV of 1882), s. 11.—Under s. 33 of the City of Bombay Municipal Act, 1888, an applicant can question the election of every candidate on the ground that the election as a whole was invalid, for the section, after specifying two permissible grounds of objection, provides that the validity of any election may be questioned for any other cause, and these words are wide enough to cover the ground of objection urged in this case. It is clear that the word "election" in the section is designed to express something wider than a legally valid election, and the words used are consistent with the view that an election which in fact took place under conditions that made it possible that there should be a valid election can be questioned. Under s. 33 the Chief Judge of the Small Cause Court has jurisdiction to determine the validity of a contested election. The High Court has no jurisdiction to entertain such a suit. Where a special tribunal, out of the ordinary course, is appointed by an Act to determine questions as to rights which are the creation of that Act, then, except so far as otherwise expressly provided or necessarily implied, that tribunal's jurisdiction to determine those questions is exclusive. It is an essential condition of those rights that they should be determined in the manner prescribed by the Act, to which they owe their existence. In such a case there is no ouster of the jurisdiction of the ordinary Courts for they never had any. The jurisdiction of the Courts can be excluded not only by express words but also by implication, and there certainly is enough in s. 33 of the Municipal Act for this purpose. *Semble:* If the High Court has jurisdiction there might be a conflict between the view of the High Court and the orders of the Chief Judge in which the order of the Chief Judge must by the express terms of the Act prevail. BHAISHANKAR *v.* THE MUNICIPAL CORPORATION OF BOMBAY (1907).
I. L. R. 31 Bom. 604

EMIGRATION ACT (XXI OF 1883 AMENDED BY ACT X OF 1902).

——ss. 6, 29, 108, 111—

—Magistrate—Magistrate, First Class, in s. 111, includes Presidency Magistrate—Agreement with Native of India to depart out of India by sea to work as an artisan Agreement made without the permission of the Protector of Emigrants—Liability of master for criminal acts done by servant on the master's behalf—Master liable for agreements entered into on his behalf by his servant in violation of s. 111—Protector of Emigrants has power to impose reasonable terms before he can issue permission applied for —Summons, issue of—Fresh summons issued on the same information—Irregularity in procedure —Criminal Procedure Code (Act V of 1898), s. 537.—The term "Magistrate of the First Class" used in s. 111 of the Indian Emigration Act, 1883, means a Magistrate appointed to exercise the highest Magisterial powers ordinarily prescribed by the Criminal Procedure Code within his jurisdiction and includes a Presidency Magistrate. Where on an information a summons is issued to the accused and owing to its disclosing no offence, a fresh summons is issued without any fresh or supplemental information, the error, omission or irregularity in the fresh summons, is not sufficient, under s. 537 of the Criminal Procedure Code, to upset the finding and sentence unless it has in *fact* occasioned "a failure of justice," that is, unless it has unfairly affected the accused's defence on the merits. Sub-s. (*1*) of s. 111 of the Indian Emigration Act hits at not merely entering into an agreement but also at any attempt to enter into it. An attempt consists in some external act which shows that progress is made in the direction of it or towards maturing and effecting it, that is, something tangible and ostensible of which the law can take hold, which can be alleged and proved. Where penal statute has been infringed by servants and criminal proceedings are taken against the master although it lies upon the prosecutor to establish the master's liability, yet the question whether he is liable turns necessarily upon what is the true construction to be placed upon the statute. The statute should be construed, not merely with reference to its language, but also its subject matter and object. Sub-s. (1) of s. 111 of the Indian Emigration Act, 1883, does not break in upon the rule of law embodied in the maxim *qui per alium facit per seipsum facere videtur.* The word "whoever" in the clause means whoever either by himself or through his agent. In other words, the Act leaves untouched the right of every person to enter into such agreements through an agent. It merely provides that such agreements shall not be entered into without the previous permission of the Local Government. The intention of the section is to hold the master liable for his servant's act, provided the act was done by the servant so as to bind the master according to the law of contract. The coupling of the word with the words "terms," "conditions" in s. 107 of the Act shows the intention of the Legislature to be that the officer authorized to grant the permission should have power to impose any reasonable terms and conditions he thinks proper as conditions precedent to the grant, whether they relate to the terms of the agreement itself or being extraneous to it relate to the execution or other considerations which have to be taken into account in order to protect the interests of the Native of India departing out of it by sea. S. 29 of the Indian Emigration Act, 1883, makes it compulsory that the execution of the agreement therein referred to should be in the presence of the Protector. In s. 108 of the Act the power conferred on the Local Government, who have delegated their power to the Protector, is discretionary, and it is left to that Government to decide whether in any particular case any agreement referred to in s. 107 shall be executed or not in its presence, that is, in the presence of the Protector acting as its delegated authority. The two sections being thus distinguishable, the language of one cannot be invoked to aid the construction of the other, especially where the language of each is plain. EMPEROR *v.* JEEVANJI (1907) . . . . **I. L. R. 31 Bom. 611**

EMIGRATION ACT (XXI OF 1883 AMENDED BY ACT X OF 1902)—*concluded.*

ENCROACHMENT.

— Projection—"Fixture"—Obstruction on public street—Calcutta Municipal Act (Bengal Act III of 1899), ss. 3, sub-s. (37), 286, 336, 341.—A verandah attached to and projecting from a house and supported on pillars sunk down into the soil between a street and a drain which runs between the street and the front of the house, is a "fixture" and "a projection, encroachment, or obstruction over or on a public street" within the meaning of s. 341 of the Calcutta Municipal Act. CORPORATION OF CALCUTTA *v.* IMADUL HUQ (1907) . **I. L. R. 34 Calc. 844**

ENCUMBRANCES, ANNULMENT OF.

See BENGAL TENANCY ACT, s. 167.
11 C. W. N. 350

ENDOWMENT.

See APPEAL . **I. L. R. 34 Calc. 584**
See HINDU LAW.
See MAHOMEDAN LAW.

1.—**Hindu endowment**—*Scheme for management of Hindu temple by Mahant—Power to make and modify such a scheme—Power to alter trust of endowment—Civil Procedure Code (Act XIV of 1882), s. 539—Provision for application of surplus funds.*—This was a suit in which the respondent charged the appellant, the manager of a certain Hindu temple, with neglect to keep proper accounts, misappropriation of offerings and other acts of a similar character, and the relief prayed was the settling of a scheme for the management of the temple including "provisions for the ap-

ENDOWMENT—*continued.*

plication of the surplus funds belonging to the temple with such modifications of the managing authority" as might be necessary to obviate the evils referred to, "and place the administration of the temple on a satisfactory footing." Objections were taken to the scheme settled by the High Court (which amended one framed by the District Court) that its effect would be to lower the position of the Mahant and weaken his authority, and that it provided for the application of surplus funds by devoting them to objects foreign to the purposes of the endowment. The Judicial Committee settled a scheme calculated to get rid of those objections and to meet the exigencies of the case without impairing the authority of the Mahant whose position, subject to the scheme, was to be the same as before, and providing that all surplus income should be invested for the benefit of the temple, with liberty to the Mahant or any person interested to apply to the District Court with reference to the carrying out the directions of the scheme, or to the High Court for any modification of it which might appear to be necessary or convenient. PRAYAG DOSS JI VARU *v.* TIRUMALA SEIRANGACHARLA GARU (1907).

I. L. R. 30 Mad. 138; L. R. 34 I. A. 78

2.—*Endowment—Religious Endowments Act (XX of 1863), ss. 3, 18—Trustee, removal of—Misfeasance—Breach of trust.*—All endowments, which are affected by Regulation XIX of 1810, whether they come under the Board of Revenue or not, fall within the purview of Act XX of 1863. In a suit brought after having obtained the sanction of the District Judge under s. 18 of Act XX of 1863, for the removal, on the ground of misfeasance, breach of trust, and neglect of duty, of a trustee of a religious endowment for the management of which the Local Government appointed in 1864 a Committee of three members under s. 7 of the Act, the defence was that s. 3 of the said Act had no application inasmuch as the endowed property had not vested in the Government before the passing of the Act, and that the proper course for the plaintiff was to have instituted the suit under s. 539 of the Code of Civil Procedure; and that the office of *Daroga* or Manager being hereditary, he could not be removed from that office: *Held*, that the provisions of Act XX of 1863 applied to the case, and that the suit was rightly instituted, and that the *Daroga* could be removed from his office by the District Judge, if he acted contrary to the trust. *Bibee Kuneez Fatima* v. *Bibee Saheba Jan.* 8 *W. R.* 313; *Sheoratan Kunwari* v. *Ram Pargash, I. L. R.* 18 *All.* 227; *Ganes Sing* v. *Ram Gopal Sing,* 5 *B. L. R. App.* 55; and *Dhurrum Singh* v. *Kissen Singh, I. L. R.* 7 *Calc.* 767, referred to. *Saturluri Seetaramanvja Charyulu* v. *Nanduri Seetapati, I. L. R.* 26 *Mad.* 166, followed. *Held*, further, that for the operation of this Act, it is immaterial whether the office of the trustee or manager is hereditary or not, and that in either case the trustee or manager who misconducted himself and acted contrary to the object of the endowment, could be dealt with under

ENDOWMENT—*concluded.*

the provisions of this Act. *Fakurudin Sahib* v. *Ackeni Sahib, I. L. R.* 2 *Mad.* 197, and *Natesa* v. *Ganapati, I. L. R.* 14 *Mad.* 103, followed. MAHOMED ATHAR *v.* RAMJAN KHAN (1907).

I. L. R. 34 Calc. 587

ENHANCEMENT OF RENT.

See BENGAL TENANCY ACT, s. 29 (*b*).

11 C. W. N. 62

See LANDLORD AND TENANT.

EQUITABLE RELIEF.

See FORFEITURE . **I. L. R. 31 Bom. 15**

—*Delay and Acquiescence when bar to equitable relief—Limitation Act, Sch. II, Art. 91.*—Delay and acquiescence will not bar the defendant's right to equitable relief unless he knew that he had the right or being a free agent at the time, he deliberately determined not to inquire what his rights were or to act upon them. Where beyond signing the deed the defendant does not do anything to show that he considered the deed effectual, he will not be barred by mere lapse of time from setting up the invalidity of the deed. Art. 91 of Sch. II of the Limitation Act applies only to suits by plaintiffs to have instruments avoided. A defendant may, by way of equitable defence, set up the invalidity of a deed, although his right to have it avoided by a suit has become time-barred. *Jugaldas* v. *Ambashankar, I. L. R.* 12 *Bom.* 501, distinguished. *Ranganath Sakharam* v. *Govind Narasino, I. L. R.* 20 *Bom.* 639, referred to and followed. LAKSHMI DOSS *v.* ROOP LAUL (1906) . **I. L. R. 30 Mad. 169**

ERRONEOUS DECISION.

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ERROR.

See PARTNERSHIP, ACCOUNT OF.

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—*Erroneous decision—Subsequent suit—Res judicata*—An erroneous decision on a question of law in a previous suit is no bar, in a subsequent suit between the same parties, to the Court deciding the same question, provided the decision in the latter suit does not in any way question the correctness of the former decree or in any way affect its operation. *Gopu Kolandavelu Chetty* v. *Sami Royar, I. L. R.* 28 *Mad.* 517, referred to. *Alimunissa Chowdhurani* v. *Shama Charan Roy, I. L. R.* 32 *Calc.* 749, referred to. *Koyyana Chittamma* v. *Doosy Gavaramma, I. L. R.* 29 *Mad.* 225, referred to. MANGALATHAMMAL *v.* NARAYANSWAMI AIYAR (1907).

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11 C. W. N. 145

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EVIDENCE.

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1. MODE OF DEALING WITH EVIDENCE.

1.—*Additional evidence on appeal—Evidence taken preliminary to hearing of appeal on the merits—Civil Procedure Code (Act XIV of 1882), ss. 568, 623.*—The legitimate occasion for s. 568 of the Civil Procedure Code (XIV of 1882) is when on examining the evidence as it stands some inherent lacuna or defect becomes apparent, and not where a discovery is made outside the Court of fresh evidence and the application is made to import it; that is the subject of the separate enactment in s. 623. On an appeal on the merits of the case being filed the appellate Court without recording any reason as required by s. 568 of the Code allowed such further evidence to be taken, not after the appeal on the merits had been heard and the evidence as it stood had been examined by the Judges but on special and preliminary application. *Held,* that the appellate Court had no jurisdiction to admit the additional evidence, that it was wrongly admitted and must be disregarded. KESSOWJI ISSUR *v.* GREAT INDIAN PENINSULA RAILWAY COMPANY (1907).
I. L. R. 31 Bom. 381; L. R. 34 I. A. 115

2. MISCELLANEOUS DOCUMENTS.

2.—*Secondary evidence—public document—Evidence Act (I of 1872), ss. 65, cl. (e) and (g), 74.*—Where the fact to be proved is the general result of the examination of numerous documents and not the contents of each particular document and the documents are such as cannot be conveniently examined in Court, evidence may be given, under s. 65, cl. (*g*) of the Evidence Act, as to the general result of the documents by a person who has examined them and who is skilled in the examination of those documents, although they may be public documents within the meaning of s. 65, cl. (*e*) and s. 74 of the Evidence Act. SUNDAR KUAR *v.* CHANDRESHWAR PRASAD NARAIN SINGH (1907).
I. L. R. 34 Calc. 293

3.—*Evidence Act (I of 1872), ss. 91, 95, 97—Where sale-deed gives wrong survey numbers to the land sold, evidence admissible to show the real lands intended to be sold.*—The general rule laid down in s. 91 of the Evidence Act is subject to the exceptions laid down in ss. 95 and 97 of the same Act. Where a sale-deed describes the land sold by wrong survey numbers, extrinsic evidence is admissible to show that the lands intended to be sold and actually sold and delivered were lands bearing different survey numbers. KARUPPA GOUNDAN *v.* PERIATHAMBI GOUNDAN (1907) . . I. L. R. 30 Mad. 397

4.—*Admissibility of evidence—Kursinama—Evidence Act (I of 1872), s. 32, cl. (5)—Statements by members of family as to relationship—Document admitted in first Court without objection—Objection to admissibility not allowed on appeal.*—In an application for Letters of Administration, the right of the applicants to be considered the next heirs of the deceased depended on proof that the relationship between their great-great-grandfather and the great-great-grandmother of the deceased was that of full brother and sister. To prove this, a *kursinama*, or genealogical table, made by the ancestress of the deceased "by the pen of gomasta," and alleged to have been filed by her in 1804 in a suit to establish the same fact, and a certified copy of an *ewaznama*, or deed of exchange, dated 17th January 1782 and corroborating the *kursinama* as to the relationship, were produced by the appplicants. The *kursinama* was admitted in the first Court without objection. Both documents, which were pronounced genuine and admissible in evidence by the District Judge, were held by the High Court

EVIDENCE—*concluded.*

to be forgeries. *Held,* that the *kursinama* was admissible in evidence. *Held,* also, that it was too late on this appeal to object to the admissibility in evidence of a document which had been admitted without objection in the first Court. The certified copy of the *ewaznama* was also held to be admissible in evidence. On the question of the genuineness of both documents, their Lordships supported the conclusion arrived at by the District Judge, and held, that the title of the applicants was established. SHAHZADI BEGAM *v.* SECRETARY OF STATE FOR INDIA (1907) . . **I. L. R. 34 Calc. 1059; L. R. 34 I. A. 194**

5.—*Stamp Act (I of 1879), s. 35—No secondary evidence admissible the receiving which will be to give some effect to an unstamped document.*—In a suit by plaintiffs to redeem lands alleged to have been mortgaged under an instrument in 1841, the document was not produced and therefore secondary evidence was not receivable to prove the contents of the document. The plaintiff sought to rely on the oral evidence as to execution of the document and the passing of possession under the deed as showing that the defendant by such possession acquired only a mortgagee's right in the property. *Held,* that the receiving of such evidence will be to give some effect to the unstamped document by connecting the possession with the contents thereof, and was therefore contrary to the provisions of s. 35 of the Indian Stamp Act. An admission of the mortgage by the defendant's ancestor was also held not receivable on the same grounds. *Chenbasapa* v. *Lakshmanan Ramchandra, I. L. R. 18 Bom. 360* referred to. THAJI BEEBI *v.* TIRUMALAIAPPA PILLAI (1907). **I. L. R. 30 Mad. 386**

EVIDENCE ACT (I OF 1872).

——s. 4—

See AGRA TENANCY ACT, s. 201. **I. L. R. 29 All. 148**

——s. 6, Illus. (a)—

See HEARSAY EVIDENCE. **11 C. W. N. 266**

——ss. 13, 40, 43—

—*Principles applicable to purchase—Hindus—Mahomedans—Judgment not inter partes—Admissibility in subsequent suit—Transaction—"Particular instances in which the right is claimed"—Res judicata.*—The principles applicable to a purchase by one member of a joint Hindu family from another are not applicable to Mahomedans. Plaintiff, a Mahomedan, brought a suit against his brother, brother's wife and the widow of a deceased brother to recover possession of a house on the strength of a registered sale-deed passed to the plaintiff by his deceased father. Subsequent to the sale to the plaintiff, certain mortgagees of the father brought a suit on the mortgage against the plaintiff, his father and mother. In the said suit

EVIDENCE ACT (I OF 1872)—*continued.*

the sale to plaintiff was held to be a sham transaction and the plaintiff had to pay off the mortgage. In the suit brought by the plaintiff for the recovery of the house on the strength of the sale-deed, the defendants relied on the judgment in the suit on the mortgage to show that the sale was a colourable transaction. The first Court allowed the claim, but the Judge in appeal dismissed it on the ground that the purchase by the plaintiff from his father was not proved to be *bonâ fide.* On second appeal by the plaintiff, a question having arisen as to the admissibility in evidence of the judgment in the suit on the mortgage; *Held, per* RUSSELL, *A.C.J.*, that the proceedings in the suit on the mortgage were admissible as relevant evidence because the plaintiff and defendants, either by themselves or their predecessors, were parties to that suit. The said proceedings came within the words "particular instances in which the right was claimed" in s. 13 of the Indian Evidence Act (I of 1872). *Per* BEAMAN, *J.*—The judgment in the suit on the mortgage was admissible to prove that the genuineness of the plaintiff's sale-deed was then questioned, but it cannot be used for any ulterior purpose. MAHAMAD *v.* HASAN (1906). **I. L. R. 31 Bom. 143**

——ss. 13 (a), 32 (7)—

See CUSTOM . . **11 C. W. N. 703**

—— s. 24—

See CONFESSION. . **11 C. W. N. 904**

——s. 30—

—*Evidence—Confession—Retracted confession—Use of retracted confession as against person making it and as against co-accused.*—A retracted confession may be taken into consideration, that is, used as evidence, not only as against the person making it, but as against persons tried jointly with the confessing accused for the same offence. As regards the person making it a retracted confession may, even without any corroborative evidence, form the basis of a conviction. As regards other co-accused, although corroborative evidence may be necessary, it is not necessary that such corroborative evidence should by itself be sufficient to support a conviction; and, *semble,* that a conviction based on the unsupported evidence afforded by the confession of a co-accused would not be unlawful. *Queen-Empress* v. *Maiku Lal, I. L. R. 20 All. 483,* followed. *Empress* v. *Ashootosh Chuckerbutty, I. L. R. 4 Calc. 483,* discussed. *Queen* v. *Mohesh Biswas, 19 W. R. Cr. 16,* referred to. EMPEROR *v.* KEHRI (1907) . . **I. L. R. 29 All. 434**

——s. 32, cl. 5—

See EVIDENCE, ADMISSIBILITY OF. **I. L. R. 34 Calc. 1059**

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See TOPOGRAPHICAL SURVEY MAP. **11 C. W. N. 230**

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——s. 65, cls. (e) and (g), s. 74—

See EVIDENCE. **I. L. R. 34 Calc. 293**

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I. L. R. 30 Mad. 251

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See BENGAL TENANCY ACT, s. 29 (*b*).
11 C. W. N. 62

——ss. 91, 95, 97—

See EVIDENCE. **I. L. R. 30 Mad. 397**

——s. 92, prov. 2, 4—

—Express Trust—Limitation Act (XV of 1877), s. 10—Effect of Limitation in cases where the person liable for payment of a legacy and the person entitled to receive the legacy are the same. —*L. K.* was a partner in the firm of *R. L.* As such partner he was entitled to his proportion of certain shares of the Hongkong Mill and of the commission earned by his firm as agents of such mill. On his retirement from the firm in 1900 entries were made in the firm's books from which it appeared that 35 of such shares were appropriated to the said *L. K.* and that he from the date of the entries ceased to have any interest in the firm of *R L. Held*, that under provisos 2 and 4 of s. 92 of the Evidence Act evidence was admissible to show that in fact the arrangement was that *L. K.* should continue to be entitled to his share in the commission. NARRONDAS *v.* NARRONDAS (1907) . **I. L. R. 31 Bom. 418**

——s. 92, prov. 4—

—Subsequent oral agreement to discharge prior registered agreement not receivable, but actual discharge may be proved.—*A* agreed by registered deed to give *B* for her life an annual amount by way of maintenance, and subsequently it was agreed orally that *B* should enjoy certain lands in lieu of such maintenance and *B* was put in possession. In a suit by *B* to recover arrears of maintenance from *A*:—*Held*, that the subsequent oral agreement was an agreement to rescind or modify the original registered agreement and was not receivable in evidence under proviso 4 to s. 92 of the Evidence Act. *Held*, further, that it was open to the defendant to prove that the arrears claimed were actually discharged by the plaintiff taking possession, although the agreement to discharge cannot be proved. KATTIKA BAPANAMMA *v.* KATTIKA KRISTANAMMA (1906).
I. L. R. 30 Mad. 231

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See DEFAMATION. **I. L. R. 29 All. 685**

——s. 108—

See DEATH, PRESUMPTION OF.
11 C. W. N. 833

——s. 114—

—Presumption—Possession of stolen property. —*Held*, that the finding in the possession of a person six months after the commission of a dacoity of articles stolen in that dacoity, such articles consisting of jewelry of a very ordinary type and by no means distinctive appearance, is not sufficient to form the basis of a conviction for participation in the dacoity. *Queen-Empress* v. *Burke, I. L. R. 6 All. 224*, and *Ina Sheikh* v. *Queen-Empress, I. L. R. 11 Calc. 160*, referred to. EMPEROR *v.* SUDHAR SINGH (1906) . **I. L. R. 29 All. 138**

EVIDENCE ACT (I OF 1872)—*concluded.*

——s. 118—

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See ADVOCATE. **I. L. R. 34 Calc. 129**

EXCHANGE.

See TRANSFER OF PROPERTY ACT, s. 119.
I. L. R. 30 Mad. 316

—Transfer of Property Act (IV of 1882), s. 118—Aposhnama setting off one decree against another—Registration—Admissibility in evidence —Registration Act (III of 1877), ss. 17, 49.— The plaintiff and the defendant having obtained decrees against each other settled their differences by an *aposhnama* by which the former gave up certain *jotes* to the latter, the decrees obtained by the plaintiff were set off against the decrees obtained by the defendant, and the parties gave up their claims under their respective decrees: *Held*, that the transaction embodied in the *aposhnama* did not amount to an exchange within the meaning of s. 118 of the Transfer of Property Act, the essence of such a transaction, *viz.*, the mutual transfer of two things being wanting in this case. It was therefore not necessary to register the document. That s. 49 of the Registration Act was no bar to the document which was unregistered being used as evidence to prove that the decrees had been satisfied, notwithstanding that it also purported to convey immoveable property. DINA NATH DAS *v.* MATIMALA DASSYA (1906) . . . . . **11 C. W. N. 342**

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EXECUTION OF DECREE—*continued.*

1. APPLICATION FOR EXECUTION, AND POWERS OF COURT.

1.—*Civil Procedure Code (Act XIV of 1882), s. 230—Money-decree—Application to execute after expiry of 12 years—Fraudulent conduct of judgment-debtor delaying execution—Frivolous application under s. 108, Civil Procedure Code—Discretion of Court.*—Where pending execution of a money-decree, the judgment-debtor made a frivolous application to set it aside under s. 108, Civil Procedure Code, with a view to delay the execution proceedings: *Held*, that the conduct of the judgment-debtor was fraudulent within the meaning of the final clause of s. 230, Civil Procedure Code. The Court to which an application to execute a money-decree is made more than 12 years after the date of the decree should exercise a sound discretion in deciding whether the execution should proceed or not. If the Court should find on evidence that the decree-holder had been diligent in proceeding with the execution from the date that the decree was passed, and that the judgment-debtor's conduct was such that it caused unnecessary delay in levying execution, he or she having acted fraudulently or used force, the Court ought to allow execution. SHAM KISSEN *v.* DAMAR KUMARI DEBI (1906).
11 C. W. N. 440

2.—*Limitation Act (XV of 1877), Sch. II, Arts. 173A, 179—Application in accordance with law—Civil Procedure Code (Act XIV of 1882), ss. 2, 223, 258, 649—Where a Court passes a decree for sale of property and the place where such property is situate, is transferred to the jurisdiction of another Court, former Court may still execute decree—Application made to such Court to transfer decree to the latter will save limitation-bar—Representative of judgment-debtor is judgment-debtor within the meaning of s. 258 and must certify adjustment within time fixed by Art. 173A of Sch. II of the Limitation Act.*—The Court at *C* passed a decree for the sale of certain immoveable property. Subsequently the territory where such property was situate was transferred to the jurisdiction of Court *D*. The decree-holder applied to the Court at *C*, to transfer his decree for execution to the Court at *D*. The decree was transferred, and in execution, the purchaser of the equity of redemption from the judgment-debtor who was made a party to the execution proceedings pleaded that the application for execution was barred by limitation, and he also set up an adjustment between the judgment-debtor and the decree-holder made more than 90 days previously which was not certified to the Court. The questions arose whether the application to the Court at *C* for transfer was an 'application in accordance with Law' within Art. 179 of Sch. II to the Limitation Act, and where the purchaser from the judgment-debtor could plead the uncertified adjustment:—*Held*, that the Court at *C* did not, within the meaning of s. 649 of the Code of Civil Procedure, cease to exist or to have jurisdiction to execute the decree on the transfer of territory from its jurisdiction, as such transfer did not take

EXECUTION OF DECREE—*continued.*

away the jurisdiction which it had to execute its own decree under s. 223 of the Code of Civil Procedure, and the Court at *D* consequently acquired no jurisdiction to execute the decree under s. 649, which could only arise, if the Court at *C* either ceased to exist or to have jurisdiction to execute the decree. The Court at *C* was, therefore, the Court to which the decree-holder was bound to apply under s. 223 of the Code of Civil Procedure, and his application saved the bar of limitation under Art. 179 of Sch. II of the Limitation Act. *Held*, also, that the provision of s. 258 of the Code of Civil Procedure applied not only to judgment-debtors, but to those claiming through them or in their right, and that an adjustment between the decree-holder and the judgment-debtor not certified within 90 days was barred under Art. 173 (A) of Sch. II of the Limitation Act, and cannot be set up as a bar to execution by one claiming through the judgment-debtor or in his right. PANDURANGA MUDALIAR *v.* VYTHILINGA REDDI (1907) . . . . **I. L. R. 30 Mad. 537**

3.—*Civil Procedure Code (Act XIV of 1882), ss. 244, 278—Application in execution of decree against karnavan by a member of the tarwad.*—Where a decree is passed against the karnavan of a tarwad in his representative capacity, all the members of the tarwad must be held to be parties to the suit and such members in execution proceedings must proceed under s 244 of the Civil Procedure Code and not under s. 278. MARIVITTIL MATHU AMMA *v.* PATHRAM KUNNOT CHERUKOT (1906). **I. L. R. 30 Mad. 215**

4.—**Against company in liquidation**—*Companies Act (VI of 1882), s. 136—Execution of decree against company in liquidation not to be prevented without making due provision for the right of judgment-creditor—Judgment-creditor attaching decree against company must be allowed to prove in the name of the decree-holder in liquidation.*—It will not be equitable for Courts to prevent judgment-creditors under s. 136 of the Companies Act from executing decrees against a company in liquidation without seeing that such judgment-creditor's rights are respected in liquidation, *Klanber* v. *Weill, 17 Times L. R. 344*, referred to. Where *A* in execution of a decree against *B* attaches under s. 273 of the Code of Civil Procedure a decree which *B* holds against a company in liquidation, the Court will direct the liquidator to recognise *A* as the representative of *B* and allow him to prove for the decree debt in the name of *B*, and to receive and apply dividends payable to *B* in satisfaction of *A*'s judgment-debt subject to the rights of other attaching creditors to rateable distribution. SESHA AYYAR *v.* THE TINNEVELLY SARANGAPANY SUGAR MILL COMPANY (LIMITED) (1907). **I. L. R. 30 Mad. 533**

5.—*Transfer of Property Act (IV of 1882), ss. 88 and 90—Decree to be executed a combination of a decree for sale and a personal decree.*—Where a decree in a suit for sale of hypothecated property is both a decree for sale of the property

EXECUTION OF DECREE—*continued.*

under s. 88 and a personal decree under s. 90 of the Transfer of Property Act, 1882, there is no need for the decree-holder to apply for a separate decree under s. 90, and if he does so and his application is rejected, this will not operate as a bar to his executing the decree against the judgment-debtor personally. SADHO SINGH *v.* THE MAHARAJA OF BENARES (1906). **I. L. R. 29 All. 12**

2. IRREGULARITY.

6.—*Material irregularity in conduct of sale—No proof of substantial injury—Postponement of sale—Order staying sale withdrawn and sale held without issue of fresh proclamation—Civil Procedure Code, ss. 290, 291, 244 and 311, 312.*—A proclamation of sale in execution of a decree fixed the sale for 20th February 1897. By an order of the Subordinate Judge of Gorakhpur, made *ex parte* on 11th February, the sale was stayed, and on 16th the Collector acting on that order, struck the proceedings off the pending file. On 22nd February, in consequence of notice received from the Subordinate Judge that the order staying the sale had been set aside, the sale was brought on in continuation of the sales listed for the 20th, which had not been finished, and on the 23rd, the property of the judgment-debtors was sold to the decree-holder who had obtained leave to bid. On application for confirmation of the sale the judgment-debtors applied under s. 311 of the Civil Procedure Code to have the sale set aside; but the Subordinate Judge confirmed the sale, finding that, although there were irregularities in the conduct of the sale, the judgment-debtors had not sustained any damage and that decision was upheld by the High Court. In a suit to have the sale annulled on the grounds stated in the application under s. 311, one of which was that the sale was illegal, without the issue of a fresh proclamation of sale: *Held* by the Judicial Committee, that the suit was not maintainable. Assuming that a fresh proclamation should have been issued, the omission was an irregularity which had involved no loss to the judgment-debtors, whose only course was to object, as they did, to the confirmation of the sale, which they could not afterwards impeach by regular suit. GAJRAJMATI TEORAIN *v.* AKBAR HUSAIN (1906). **I. L. R. 29 All. 196; L. R. 34 I. A. 37**

3. STAY OF EXECUTION.

7.—*Stay of execution—Appeal—Sale of immoveable property in execution of decree for money—Appellate Court, power of, to stay sale—Practice—Civil Procedure Code (Act XIV of 1882), s. 546, para. 3.—Held* by the Full Bench (RAMPINI, *A.C.J.*, expressing no opinion), that when an appeal has been filed against a decree for money, the Appellate Court has jurisdiction to stay the sale of immoveable property of the judgment-debtor in execution of that decree, pending the disposal of the appeal. *Per* RAMPINI, *A.C.J.*, WOODROFFE and MOOKERJEE, *JJ.*: An Appellate Court cannot

EXECUTION OF DECREE—*continued.*

pass orders under s. 546, para. 3, of the Code of Civil Procedure staying a sale of immoveable property. *Per* BRETT and MITRA, *JJ.* An Appellate Court has power to pass an order under the *third* paragraph of s. 546 of the Code, staying execution. *Kunj Lal Marwari* v. *Bahitram Marwari, 8 C. W. N. 381,* discussed. TRIBENI SAHU *v.* BHAGWAT BUX (1907). **I. L. R. 34 Calc. 1037**

4. STEP IN AID OF EXECUTION.

8.—*Limitation Act (XV of 1877), Sch. II, Art. 179—Execution of decree—Limitation—"Step in aid of execution."*—*Held,* that an application made by the transferee of a decree asking that his name might be substituted on the record for that of the original decree-holder, and a further application asking for time to serve one of the judgment-debtors, whose address was not then known, with notice of the application for substitution were both applications made to the proper Court to take some step in aid of execution within the meaning of Art. 179 of the second Schedule to the Indian Limitation Act, 1877. PITAM SINGH *v.* TOTA SINGH (1907) . . **I. L. R. 29 All. 301**

9.—*Step in aid of execution—Limitation Act (XV of 1877), Sch. II, Art. 179—Application to bring on record representative of deceased judgment-debtor is a step in aid of execution—Civil Procedure Code (Act XIV of 1882), ss. 232, 368—Application under s. 368 not prohibited by s. 232.*—Under the proviso to s. 232 of the Code of Civil Procedure, the transferee of a decree cannot obtain execution without notice to the judgment-debtor, and where the judgment-debtor is dead, no such notice can be sent until his representatives are brought on record. There is nothing in s. 232 to prohibit the transferee from applying under s. 368 to bring the representative on record and such an application must be regarded as a step in aid of execution within the meaning of Sch. II of Art. 179 of the Limitation Act. MAHALINGA MOOPANAR *v.* KUPPANACHARIAR (1907) **I. L. R. 30 Mad. 541**

5. TRANSFER OF DECREE FOR EXECUTION.

10.—*Practice—Transfer of decree from one district to another—Rules of execution different in the two districts—Procedure.*—Where in different districts, different modes of execution are prescribed, and where the question is how a decree passed in one, but of which execution is sought in another of such districts, is to be executed, the executing Court must be guided by the rules in force in its own district. MARTAND *v.* VINAYAK (1906). **I. L. R. 31 Bom. 5**

11.—*Transfer of decree for execution—Decree of Court in British India—Benares, Family Domains of Maharaja of—Foreign Court—Court established by authority of Governor-General—Kondh, Court of Native Commissioner of—Benares Family Domains Regulation (VII of 1828)—Benares Family Domains Act (XIV of 1881)—*

EXECUTION OF DECREE—*continued.*

Civil Procedure Code (Act XIV of 1882), ss. 223, 229, 229B.—The family domains of the Maharaja of Benares are situated within British India as defined in Act X of 1897, s. 3, cl. 7, and s. 4, cl. 1; and the Court of the Native Commissioner or Subordinate Judge of Kondh within those domains, established under Regulation VII of 1828 amended by Act XIV of 1881, is a Court established by the authority of the Governor-General in Council; consequently neither s. 229 nor s. 229B of the Code of Civil Procedure applies to the execution of decree passed by it. To make s. 223 of the Code of Civil Procedure relating to the transmission of decrees of one Court to another for execution applicable, it is necessary that the provisions of the Code should regulate the procedure of both the Courts. The Code having become applicable to the Court of the Subordinate Judge of Kondh by virtue of Rules made by the Lieutenant-Governor of the North-Western Provinces on 2nd April 1888 under s. 22, Regulation VII of 1828 and the notification by the Governor-General in Council, dated 1st June 1882, a decree of that Court may be transferred to, and executed by, the Civil Court in the district of Saran. The Scheduled Districts Act (XIV of 1874) and the Laws Local Extent Act (XV of 1874) referred to. *Kashi Mohun Borua* v. *Bishnoo Pria, I. L. R. 15 Calc. 365,* and *Kasturchand Gujar* v. *Parsha Mahar, I. L. R. 12 Bom. 230,* referred to. PRABHU NARAIN SINGH *v.* SALIGRAM SINGH (1907). **I. L. R. 34 Calc. 576**

6. VALIDITY OF DECREE.

12.—*Civil Procedure Code (Act XIV of 1882), s. 244 (c)—Objection to validity of decree cannot be raised in execution proceedings.*—An objection by the defendant in a mortgage suit to the sale of properties directed to be sold by the decree in such suit, on the ground that such property is not liable for the decree, is not an objection relating to the execution, discharge or satisfaction of the decree within the meaning of s. 244 (*c*) of the Code of Civil Procedure but one questioning the validity of the decree itself and cannot be entertained in execution proceedings. KUMARETTA SERVAIGARAN *v.* SABAPATHY CHETTIAR (1906) . **I. L. R. 30 Mad. 26**

7. MISCELLANEOUS.

13.—*Execution of decree—Civil Procedure Code (Act XIV of 1882), s. 317—Certified purchaser—Interpretation.*—The expression "certified purchaser" in s. 317 of the Civil Procedure Code (Act XIV of 1882) includes the person standing in the shoes of the Court-purchaser. HARI GOVIND *v.* RAMCHANDRA (1906). . **I. L. R. 31 Bom. 61**

14.—*Sale in execution—Purchase of share in property to some extent incumbered—Presumption—Civil Procedure Code, s. 318—Limitation Act (XV of 1877), Sch. II, Art. 138—Suit for possession.*—Where in execution of a simple money-decree an undivided share in immoveable property, part of which was subject to mortgages, was sold, it

EXECUTION OF DECREE—*concluded.*

was *held* that in the absence of specific indications to the contrary it must be presumed that the share sold was, as far as might be, the share which was not incumbered. *Held*, also, that the fact that an application under s. 318 of the Code of Civil Procedure made by an auction-purchaser has been rejected as made beyond time is no bar to a suit for possession of the property purchased. *Seru Mohan Bania* v. *Bhagoban Din Pandey, I. L. R. 9 Calc. 602*, and *Kishori Mohan Roy Chowdhry* v. *Chander Nath Pal, I. L. R. 14 Calc. 644*, followed. SHEO NARAIN *v.* NUR MUHAMMAD (1907).

I. L. R. 29 All. 463

15.—*Mitakshara family—Decree for mesne profits against father—Attachment—Execution proceeding struck off whilst attachment continued—Validity—Fresh proceeding in execution without attachment—Sale order—Death of judgment-debtor before sale—Sons and grandsons if bound—"Representatives" for purposes of execution—Civil Procedure Code (Act XIV of 1882), s. 24—Debt not illegal or immoral—Son's pious obligation to pay.*—When an execution proceeding is struck off, it does not necessarily put an end to the attachment. It is competent for the Court to make an order striking off an execution proceeding and at the same time continuing the attachment. *Ram Newaz* v. *Ram Charan, I. L. R. 18 All. 49*, dissented from. *Shaikh Kumaruddin* v. *Jawahir Lal, 9 C. W. N. 601*: *L. R. 32 I. A. 102*: *1 C. L. J. 381*, relied on. When an executing Court in striking off an execution proceeding ordered the attachment to subsist for three months, and before that period expired, the decree-holder made a fresh application for execution and the Court ordered sale-proclamation to issue in respect of properties attached in the previous proceeding, but the proclamation could not be served on the judgment-debtor, a member of a joint Mitakshara Hindu family, owing to his death. *Held*, that there being a subsisting attachment followed by an order for sale made in the lifetime of the judgment-debtor, the decree-holder was entitled to proceed with the sale and realise his decree. *Suraj Bunsi Koer* v. *Sheo Prosad Singh, L. R. 6 I. A. 88*, followed. *Madho Prasad* v. *Mehrban Singh, L. R. 17 I. A. 194*, distinguished. *Sheo Prosad* v. *Hiralal, I. L. R. 12 All. 440*, referred to. *Held*, further, that the persons who took the judgment-debtor's share in the joint family property by survivorship were representatives of the judgment-debtor within s. 244, Civil Procedure Code, and that it was not open to them to object that the debt for the recovery of which the decree had been obtained was tainted with immorality and illegality. Principle of *Ishan Chunder* v. *Bani Madhob, I. L. R. 24 Calc. 62*, applied. *Azgar Ali* v. *Asaboddin Kagi, 9 C. W. N. 134*, referred to. PEARY LAL SINGH *v.* CHANDI CHARAN SINGH (1906) . . . . . **11 C. W. N. 163**

EXECUTION PROCEEDING.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 82 . **I. L. R. 34 Calc. 13**

EXECUTOR.

See EXPRESS TRUST.

I. L. R. 31 Bom. 418

——claims by or against—

—Civil Procedure Code (Act XIV of 1882), s. 44, rule (b)—Meaning of the rule.—Those to whom rule (*b*) of s. 44 of the Code relates have the common characteristic that they owe their legal condition to the death of another. But there are others of whom this can be predicated, as for instance legatees or next-of-kin who are not named in rule (*b*). Executors, administrators and heirs have this characteristic in common, not shared by legatees and next-of-kin, namely, that not only do they acquire title from the deceased, but they may represent him. In this is to be found the clue to the meaning of the rule. HAFIZABOO *v.* MAHOMED CASSUM (1906).

I. L. R. 31 Bom. 105

EX PARTE DECREE.

See CIVIL PROCEDURE CODE, S. 108.

I. L. R. 29 All. 574

1.—*Civil Procedure Code (Act XIV of 1882), ss. 108, 540, 562, 564, 588 (9)—On appeal against ex parte decree, Court may reverse decree on the ground that it was wrongly decided ex parte and remand the case.*—When a suit is decided *ex parte* an Appellate Court to which an appeal from the decree is preferred under s. 540 of the Code of Civil Procedure, has jurisdiction to reverse the decree of the lower Court on the ground that such Court was wrong in proceeding to decide the suit *ex parte* and remand the suit for re-hearing. *Jonardan Dobey* v. *Ramdhone Singh, I. L. R. 23 Calc. 738*, not followed. *Parvatishankar Durgashankar* v. *Bai Naval, I. L. R. 17 Bom. 733*, dissented from. *Caussanel* v. *Soures, I. L. R. 23 Mad. 260*, dissented from. *Perumbara Nayar* v. *Subrahmanian Pattar, I. L. R. 23 Mad. 445*, followed. SADHU KRISHNA AYYAR *v.* KUPPAN AYYANGAR (1906) . . **I. L. R. 30 Mad. 54**

2.—*Civil Procedure Code, s. 108—Decree set aside as against one of several joint judgment-debtors—Decree passed subsequently against exempted party—Execution of decree—Limitation.*—A decree for sale on a mortgage was passed against several defendants jointly on the 25th of August 1900 and made absolute on the 21st December 1901. As against one defendant, however, the decree was *ex parte*, and it was set aside as against her on appeal on the 11th March 1902. Subsequently a decree was passed on the merits against this defendant, and her appeal was dismissed by the High Court on the 16th November 1904. As against this defendant the decree was made absolute on the 27th of November 1905. *Held*, that the orders of the 25th August 1900 and the 16th November 1904, between them, operated as one decree for the sale of the mortgaged property; that the joint effect of the orders of the 21st December 1901 and the 27th November 1905 was to make absolute this decree, and

EX PARTE DECREE—*concluded.*

that an application for execution made on the 21st December 1905, was not barred by limitation. *Bhura Mal* v. *Har Kishan Das, I. L. R. 24 All. 383; Sham Sundar* v. *Muhammad Ihtisham Ali, I. L. R. 27 All. 501,* and *Shaida Hussain* v. *Hub Husain, Weekly Notes (1902) 184,* referred to. GAURI SAHAI *v.* ASHFAK HUSSAIN (1907).

I. L. R. 29 All. 623

EX PARTE ORDER.

See SMALL CAUSE COURTS ACT

I. L. R. 31 Bom. 45

EXPRESS TRUST.

See TRUSTS ACT.

I. L. R. 31 Bom. 222

—*Limitation Act (XV of 1877), s. 10—Effect of limitation in cases where the person liable for payment of a legacy and the person entitled to receive the legacy are the same.*—*L. K.* was a partner in the firm of *R. L.* As such partner he was entitled to his proportion of certain shares of the Hongkong Mill and of the commission earned by his firm as agents of such mill. On his retirement from the firm in 1900 entries were made in the firms books from which it appeared that 35 of such shares were appropriated to the said *L. K.* and that he from the date of the entries ceased to have any interest in the firm of *R. L. Held,* that under provisos 2 and 4 of s. 92 of the Evidence Act evidence was admissible to show that in fact the arrangement was that *L. K.* should continue to be entitled to his share in the commission. The suit was brought by the executors of *L. K.*'s will against the executors of *R. L.*'s will. The first plaintiff was an executor of both wills. *Held,* (*i*) that *R. L.* was an express trustee in respect of *L. K.*'s share of the commission, and that s. 10 of the Limitation Act was no bar to the plaintiff's suit. *Soar* v. *Ashwell,* [*1893*] *2 Q. B. 390,* followed and applied. (*ii*) That the executors of *R. L.*'s will could not rely on the Statute of Limitation when the non-payment of *L. K.*'s share of the commission within three years of the receipt thereof was occasioned by their own default. (*iii*) That when the person liable for the payment of a legacy and the person entitled to receive it are the same, no question of limitation can arise. *Binns* v. *Nichols, L. R. 2 Eq. 257,* followed. NARRONDAS *v.* NARRONDAS (1907).

I. L. R. 31 Bom. 418

EXTENSION OF TIME.

See APPEAL TO PRIVY COUNCIL.

11 C. W. N. 1104

F

FABRICATING FALSE EVIDENCE.

1.—*Penal Code (Act XLV of 1860), ss. 192, 193—Necessity of finding the intention—Causing*

FABRICATING FALSE EVIDENCE—*concluded.*

false entry of a marriage in the marriage register—Mahomedan marriage register.—In order to convict a person of fabricating false evidence under s. 193, Indian Penal Code, it is necessary to find that the person intended that the fabrication may appear in evidence in a judicial proceeding or in a proceeding taken by law before a public servant as such or before an arbitrator. Where the accused by falsely representing to the marriage registrar that a certain marriage had been solemnised, induced the registrar to make a false entry of the registration of the marriage: *Held,* that the accused cannot be convicted of the offence of fabricating false evidence under s. 193, Indian Penal Code, in the absence of a finding that the intention of the accused was that the false entry in the marriage register might appear in evidence in a judicial proceeding or some other proceeding of a like nature as contemplated by s. 192, Indian Penal Code. MOHAMED SIDDIQ *v.* EMPEROR (1907) . . . . . 11 C. W. N. 911

2.—*Penal Code (Act XLV of 1860), s. 192.*—One Cheda Lal, whose brother Debi was an accused person, applied to the Court on behalf of Debi asking that the witnesses for the prosecution might first of all be made to identify Debi. The Court assenting to this request, Cheda Lal produced before the Court ten or twelve men, none of whom could be identified as Debi by any of the prosecution witnesses. Upon being asked by the Court where Debi was, Cheda Lal pointed out a man who, upon further investigation, was discovered to be wearing a false moustache and to be not Debi at all, but one Chimman. *Held* upon these facts, that Cheda was rightly convicted of fabricating false evidence having regard to the definition contained in s. 192 of the Indian Penal Code. EMPEROR *v.* CHEDA LAL (1907).

I. L. R. 29 All. 351

FACTS, FINDING OF.

See SECOND APPEAL. 11 C. W. N. 83

FAIR COMMENT.

See DEFAMATION. I. L. R. 31 Bom. 293

See PENAL CODE . I. L. R. 31 Bom. 293

FALSE CHARGE.

See PENAL CODE. I. L. R. 31 Bom. 204

See PENAL CODE, S. 211.

I. L. R. 34 Calc. 42

—*Penal Code, s. 211—Practice—Opportunity to be given to prove charge before prosecuting.*—Where it is intended to prosecute any person under s. 211 of the Indian Penal Code such person ought to be given an opportunity of substantiating, if he can, the charge which he has brought before he is prosecuted. *Queen-Empress* v. *Ganga Ram, I. L. R. 8 All. 38,* and *Queen-Empress* v. *Raghu Tiwari, I. L. R. 15 All. 336,* followed. EMPEROR *v.* TULA (1907) . . . I. L. R. 29 All. 587

FALSE EVIDENCE.

See FABRICATING FALSE EVIDENCE.

FALSE IMPRISONMENT.

See DAMAGES, SUIT FOR.
I. L. R. 29 All. 44

FALSE INFORMATION.

See PENAL CODE, ss. 182, 211.
I. L. R. 31 Bom. 204

FERRY, COMPENSATION FOR.

See COMPENSATION.
I. L. R. 34 Calc. 470

FIDUCIARY RELATIONSHIP.

See HUSBAND AND WIFE.

—Parent and child, transaction between—Undue influence—Parent and even strangers claiming benefit bound to show that the child was a free agent and had independent advice—Delay and acquiescence, when a bar to equitable relief—Limitation Act (XV of 1877), Sch. II, Art. 91—Does not apply to defences.—A parent stands in a fiduciary relation towards his child; and any transaction between them by which any benefit is procured by the parent to himself or to a third party at the expense of the child will be viewed with jealousy by Courts of Equity and the burden will lie on the parent or third party claiming the benefit of showing that the child in entering into the transaction had the independent advice of persons who acted in his interests, that he thoroughly understood the nature of the transaction, and that he was removed from all undue influence when the gift was made. *Huguenin* v. *Baseley, 14 Ves. 299*, referred to. *Allcard* v. *Skinner, 36 Ch. D. 145 at pp. 181, 182*, referred to. Delay and acquiescence will not bar the defendant's right to equitable relief unless he knew that he had the right or being a free agent at the time, he deliberately determined not to inquire what his rights were or to act upon them. Where beyond signing the deed the defendant does not do anything to show that he considered the deed effectual he will not be barred by mere lapse of time from setting up the invalidity of the deed. Art. 91 of Sch. II of the Limitation Act applies only to suits by plaintiffs to have instruments avoided. A defendant may, by way of equitable defence, set up the invalidity of a deed, although his right to have it avoided by a suit has become time barred. *Jugaldas* v. *Ambashankar, I. L. R. 12 Bom. 501*, distinguished. *Ranganath Sakharam* v. *Govind Narasinv, I. L. R. 20 Bom. 639*, referred to and followed. LAKSHMI DOSS *v.* ROOP LAUL (1906). **I. L. R. 30 Mad. 169**

FIRST INFORMATION.

—First information when to be recorded—Object of recording—Investigation by Police commenced without a first information—Criminal Procedure Code (Act V of 1898), s. 154—Irregularity.—*A* finding his brother *M* to be missing gave information to the Sub-Inspector of Police, but the latter did not record it under s. 154, Code of Criminal Procedure. Nevertheless he commenced investigation and after four days when the matter had so developed that there was some reason to believe that *M* had been murdered, he for the first time recorded a statement by *A* as the first information. *Held*, that such a practice is altogether contrary to the provisions of s. 154, Code of Criminal Procedure, and a statement recorded under such circumstances cannot be regarded as a first information. The first information if recorded as directed by s. 154 at the time it is made is of considerable value at the trial because it shows on what materials the investigation commenced and what was the story then told. Any statement recorded, as in this case, several days after the commencement of the investigation and after there had been some development is not only no first information, but has very little or no value at all as the original story, because it can be made to fit into the case as then developed. EMPEROR *v.* KAMPU KUKI (1902).
11 C. W. N. 554

FIXTURE.

See ENCROACHMENT.
I. L. R. 34 Calc. 844

FORECLOSURE.

See BENGAL REGULATION XVII OF 1806, S. 8 . . **I. L. R. 29 All. 145**

See MORTGAGE.

FOREIGN COURT, JUDGMENT OF.

—Where party has submitted to jurisdiction, irregularities not affecting jurisdiction of the Court do not vitiate the judgment.—A party who has submitted to the jurisdiction of a foreign Court is bound by its judgment, when such judgment is within jurisdiction and does not offend the principles of natural justice. Irregularities which do not affect the jurisdiction of the Court do not vitiate such judgment even when they are such as will, in the view of the foreign Court, render the judgment there a nullity. The judgment cannot be impeached on grounds which could have been, but were not, taken in the foreign Court. *Pemberton* v. *Hughes*, [*1899*] *1 Ch. 781*, referred to. GUDARU KRISTNAYYA NAIDU *v.* MARADUGULA VENKATARATNAM (1907). **I. L. R. 30 Mad. 292**

FOREIGN GOODS, SALE OF.

See MARKET. . . **11 C. W. N. 1128**

FORFEITURE.

See CONFISCATION.
I. L. R. 34 Calc. 986

FORFEITURE—*concluded.*

1.—*Civil Procedure Code (Act XIV of 1882), s. 375—Consent decree—Status of landlord and tenant—Suit to enforce forfeiture—Relief against forfeiture.*—When a plaintiff is seeking to enforce by original suit a right to forfeiture contained in a consent decree (passed under s. 375 of the Civil Procedure Code in accordance with a lawful agreement recorded under that section), whereby the status of landlord and tenant is established between the plaintiff and defendant, the Court in the exercise of its equitable jurisdiction is not precluded from granting such relief against forfeiture as it might have granted, had the status arisen from contract or custom. *Per* JENKINS, *C.J.*—As under s 375 of the Civil Procedure Code (Act XIV of 1882) the decree was to be in accordance with the agreement, it cannot have altered the relations of the parties as they existed under the agreement. And as it was an incident of those relations that the right of forfeiture was subject to relief, that incident must still apply when those relations are established by a decree passed in accordance with the agreement. *Per* BEAMAN, *J.*—The difference between a consent decree declaring the agreement of parties, and the agreement of parties themselves, when the one or the other is sought to be afterwards enforced, goes no further than this, that in the former case it would not be open to a party to question the accuracy of the decree, as expressing what at the time was the contract which had been made. *Shirekuli Timapa Hegda* v. *Mahablya, I. L. R. 10 Bom. 435,* dissented from. KRISHNABAI *v.* HARI GOVIND (1906).

I. L. R. 31 Bom. 15

2.—*Indian Penal Code, ss. 62 and 406—Criminal breach of trust—Sentence.*—*Held,* that the special sentence provided for by s. 62 of the Indian Penal Code is a sentence which should only be inflicted in rare cases - those in which crimes of an atrocious nature are exposed or in which offences have been committed under aggravated circumstances. *Queen* v. *Mahomed Akhir, 12 W. R. Cr. 17,* followed. EMPEROR *v.* AMBIT LAL (1906).

I. L. R. 29 All. 25

FORGED DOCUMENT, USING AS GENUINE.

See FORGERY. . . **11 C. W. N. 838**

FORGERY.

—*Penal Code (Act XLV of 1860), s. 471, interpretation of—Forged document, using, as genuine.*—When in a judicial enquiry under s. 202, Criminal Procedure Code, against a person accused of having forged a document, the accused states before the enquiring Magistrate that the document is genuine, he cannot be said to have used the document so as to make himself amenable to the provisions of s. 471, Indian Penal Code, even though he knew the document to be a forged one. The use of a forged document which is contemplated by s. 471, Indian Penal Code, is such use as causes wrongful gain or wrongful loss. That is to say, that section applies to the case of a person who appears before some other person or before a Court, with a document and endeavours to induce that person or Court to do some act which he or it would not do if it was known to be a forgery. ASIMUDDI SHEIKH *v.* EMPEROR (1907) . . . **11 C. W. N. 838**

FORUM OF APPEAL.

See VALUATION OF SUIT.

I. L. R. 34 Calc. 954

FRAME OF SUIT.

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FRAUD.

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1. PLEADING FRAUD. 152
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I. L. R. 29 All. 212

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I. L. R. 30 Mad. 402

See RES JUDICATA **I. L. R. 29 All. 608**

See SALE IN EXECUTION OF DECREE.

11 C. W. N. 1011

See SUIT TO SET ASIDE DECREE.

I. L. R. 29 All. 418

——on creditors—

See FRAUDULENT CONVEYANCE.

I. L. R. 34 Calc. 999

1. PLEADING FRAUD.

1.—*Benami sale—Purchaser from benamidar—Attachment in execution of a money decree against the original owner - Raising of the attachment at the instance of the purchaser from benamidar—Suit by the purchaser to recover possession—Original owner setting up his own fraud.*—*H,* the owner of certain property, executed a *benami* sale-deed and the *benamidar* sold the property to the plaintiffs' father. The property was afterwards attached in execution of a money decree against *H,* but the attachment was raised at the instance of the plaintiffs' father. Subsequently the plaintiffs brought a suit for the recovery of possession from *H. H* pleaded his own fraud as an effective answer to the claim. *Held,* allowing the plaintiffs' claim, that the defendant *H* could not set up his fraud to a claim of immoveable property conveyed by him to the *benamidar.* SIDLINGAPPA *v.* HIRASA (1907).

I. L. R. 31 Bom. 405

FRAUD—*concluded.*

2. JURISDICTION.

2.—*Decree of superior Court if can be declared void by inferior Court—Jurisdiction.*—A Court of inferior jurisdiction is competent to declare a decree of a superior Court to be a nullity on the ground of fraud, if otherwise it has jurisdiction to entertain the suit. *Aushootosh Chandra* v. *Tara Prasanna Roy, I. L. R. 10 Calc. 612; Kedar Nath Mukerjee* v. *Prosonna Kumar Chatterjee, 5 C. W. N. 559; Nunda Lal Bose* v. *Nistarini Dasse, 7 C. W. N. 353: I. L. R. 30 Calc. 369,* referred to. SARTHAKRAM MAITI *v.* NUNDO RAM MAITI (1906) . . . . . **11 C. W. N. 579**

3.—*Suit to set aside a decree on the ground of fraud—No other relief claimed—Jurisdiction.*—Save under special circumstances, a suit to set aside a decree obtained by fraud, in which no other relief whatever is claimed, cannot be maintained in any district outside the district in which the fraud was committed and the fraudulent decree was obtained. *Mewa Lal Thakur* v. *Bhujun Jha, 13 B. L. R. App. 11; Abdul Mazumdar* v. *Mahomed Gazi, I. L. R. 21 Calc. 605; Pran Nath Roy* v. *Mahesh Chandra Chowdhry Moitra, I. L. R. 24 Calc. 546; Kedar Nath Mukerjee* v. *Prosonna Kumar Chatterjee, 5 C. W. N. 559; Behari Lal* v. *Pokhe Ram, I. L. R. 25 All. 48; Nistarini Dassi* v. *Nundo Lall Bose, I. L. R. 26 Calc. 908,* and *Bibeeman* v. *Abdool Aziz, 4 C. L. R. 366,* referred to. UMRAO SINGH *v.* HARDEO (1907). **I. L. R. 29 All. 418**

FRAUDULENT CONVEYANCE.

—*Fraud on creditors—Transferee, rights of—"Good faith"—Sale by debtor with intent to defeat or delay creditor—Fraudulent intent of vendor shared in by purchaser—Fraudulent preference—Sale in consideration of existing debt—Sale of entire estate of debtor—Transfer of Property Act (IV of 1882), s. 53—Practice—Frame of suit—Appeal.*—A suit under s. 53 of the Transfer of Property Act to obtain a declaration that a conveyance is voidable at the instance of the creditors of the transferor must be brought by or on behalf of all the creditors, and the suit unless so framed would not be maintainable. *Burjorji Dorabji Patel* v. *Dhunbai, I. L. R. 16 Bom. 1; Ishvar Timappa Hegde* v. *Devar Venkappa, I. L. R. 27 Bom. 146; Chatterput Singh* v. *Maharaj Bahadur, I. L. R. 32 Calc. 198,* and *Reese River Silver Mining Co.* v. *Atwell, L. R. 7 Eq. 347,* referred to. But a suit cannot be dismissed on this ground, if the objection is taken for the first time in appeal. In order to establish the validity of a conveyance impeached as a fraud upon creditors, consideration and good faith must both be proved. If the transfer is for valuable consideration and is made with a full intention that the property should be parted with, and not as a cloak for retaining a benefit to the grantor, it will be valid as against a creditor, though the object of the transferor may

FRAUDULENT CONVEYANCE—*concluded.*

have been to defeat an impending execution. Where, however, a transfer, although for valuable consideration and intended to pass the absolute title in the property, is made with the object of defeating or delaying the grantor's creditors, and such object is known to the transferee who aids and assists in executing it, the transfer cannot be regarded as one made in good faith. In the absence of a law of bankruptcy, a preferential transfer of property to one creditor in satisfaction of an existing debt due to him is not fraudulent as to other creditors, although the debtor in making the transfer intended to defeat the claims, and the transferee had knowledge of such intention, if the only purpose of the latter is to secure his own debt and the property is not worth materially more than the amount of his debt. It makes no difference that the transfer is of the whole of the estate of the debtor. *Ishan Chunder Das Sarkar* v. *Bishu Sirdar, I. L. R. 24 Calc. 825,* approved. HAKIM LAL *v.* MOOSHAHAR SAHU (1907). **I. L. R. 34 Calc. 999**

FRAUDULENT PREFERENCE.

See FRAUDULENT CONVEYANCE.
I. L. R. 34 Calc. 999

FRAUDULENT TRANSFER.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 53 . **I. L. R. 34 Calc. 999**

—*13 Elizabeth, c. 5, and the Transfer of Property Act IV of 1882, s. 53—Transfer, though for valuable consideration void if made to defeat creditors—Such transfer not valid even in part.*—S. 53 of the Transfer of Property Act does not apply to transfers of moveable property. A transfer of moveable property by a debtor is valid as against his creditors only when it is made *bonâ fide* and for valuable consideration. Where a transfer, though in part for valuable consideration, is, as regards the other part, only an arrangement to defeat creditors it is wholly void against the creditors both under s. 53 of the Transfer of Property Act and under 13 Elizabeth, c. 5, and cannot be upheld to the extent to which it is supported by consideration. There is nothing in the statute of Elizabeth or in s. 23 of the Transfer of Property Act to prevent a debtor giving preference to a creditor if nothing is done to affect the other creditors injuriously. *Twyne's Case, 3 Co. Rep. 80,* referred to and followed. *Ramasamia Pillai* v. *Adinarayana Pillai, I. L. R. 20 Mad. 465,* distinguished. CHIDAMBARAM CHETTIAR *v.* SAMI AIYAR (1906) . . **I. L. R. 30 Mad. 6**

FREE AGENT.

See WILL, EXECUTION OF.
11 C. W. N. 824

FRUIT TREES.

See LANDLORD AND TENANT.
I. L. R. 30 Mad. 155

FULL BENCH.

——decision of—

—*Practice.*—A decision of a Full Bench cannot be questioned except before a Bench specially constituted for that purpose. BALARAM v. MANGTA DASS (1907).
I. L. R. 34 Calc. 941

FURTHER ENQUIRY.

See REVISION.

1.—*Criminal Procedure Code (Act V of 1898), s. 437—Notice to the accused—Power to direct further enquiry.*—The power conferred by s. 437 of the Criminal Procedure Code to direct a further inquiry should be used sparingly and with great caution. Though it is not illegal to make an order directing further enquiry under s. 437, Criminal Procedure Code, without notice to the accused, it is always desirable that notice should be given. The ordinary rule is that no order should be passed against an accused without notice to him. A question may be very clear to a Court directing further inquiry, but still it ought to give an accused already discharged an opportunity to be heard. JOY GOPAL BANERJEE v. EMPEROR (1906) . **11 C. W. N. 173**

2.—*Criminal Procedure Code (Act V of 1898), ss. 203, 437—Transfer by District Magistrate of case remanded for further enquiry—Rioting—Cross-cases—Dismissal—Construction of order for further enquiry - Rule on District Magistrate—Accused's right to show cause.*—No order should be passed against an accused person without his getting an opportunity of being heard. Where a rule was issued only upon the District Magistrate to show cause why further enquiry should not be directed into a complaint against the accused, which had been dismissed under s. 203, Criminal Procedure Code: *Held*, that the accused were entitled to be heard. Where a Sessions Judge remands a case dismissed by a Deputy Magistrate under s. 203, Criminal Procedure Code, and directs that further proceedings should be held under the same section, the case cannot after the remand be transferred by the District Magistrate from the file of the Deputy Magistrate. The two rival parties in a case of rioting preferred two complaints which were dismissed by the Magistrate under s. 203, Criminal Procedure Code. The Sessions Judge on the application of both parties under s. 437, Criminal Procedure Code, ordered that further enquiry should be held in both the cases and directed that if one of them be found false, the other case should be tried. When after remand one of the cases was dismissed under s. 203: *Held*, that the Sessions Judge's order contemplated that the cases should be decided after regular trial and not dealt with under s. 203, Code of Criminal Procedure, and that the order of the Deputy Magistrate dismissing the case under s. 203, Criminal Procedure Code, was illegal. BEIJ KISHORE GHOSE v. GOPAL RAI (1906).
11 C. W. N. 316

FUTURE MAINTENANCE.

——decree for—

—*Limitation Act (XV of 1877), Sch. II, Art. 79, cl. 6—Decree directing maintenance from date of plaint is a decree within cl. 6—Res judicata—Erroneous decision on question of law no bar.*—A decree directing payment of future maintenance from the date of plaint, till death of recipient at a certain rate, is a decree for payment on that date in every subsequent year and the period of limitation for the execution of such a decree is that prescribed by Art. 179 (6) of Sch. II of the Limitation Act. An erroneous decision on a question of law in a previous application for execution of such a decree does not operate as a bar in a subsequent application to recover arrears which accrued subsequently. *Kaveri v. Venkamma, I. L. R. 14 Mad. 396*, followed. AITAMMA v. NARAINA BHATTA (1907).
I. L. R. 30 Mad. 504

FUTURE MAINTENANCE—*concluded.*

G

GAMBLING.

1.—*Gambling Act (B. C. II of 1867), s. 4—Common gambling house.*—Where the premises of Messrs. John King & Co. were used, during the night, when they were deserted for business purposes, for the purpose of gambling for months together, to the profit of the durwans left in charge thereof: *Held*, that the premises could not be regarded as a "common gambling house" even though the durwans might have made some profit out of the gambling which went on there. MOHESH NARAIN PANDAY v. EMPEROR (1907).
11 C. W. N. 972

2.—*Gambling—Bombay Prevention of Gambling Act (Bom. Act IV of 1887), ss. 4, 5, 6, 7—Keeping a common gaming-house—Presumption under s. 7 of the Act—Criminal Procedure Code (Act V of 1898), ss. 65, 105.*—The complainant, an Abkari Sub-Inspector, having come to know that gambling was then actually going on in the house of the accused, communicated the information to the District Magistrate, whom he met on the road. The District Magistrate desired the complainant to go and stand before the house and ordered him to enter the house and arrest the persons gambling there on sight of the District Magistrate's carriage at the spot. The complainant did so; and on a signal by the District Magistrate entered the house and arrested the accused with cards and money. During the trial, the District Magistrate was not examined as a witness. The trying Magistrate convicted the accused for offences under the Bombay Prevention of Gambling Act (Bombay Act IV of 1887), applying to them the presumption arising under s. 7 of the Act: *Held*, reversing the conviction and sentence, that the Magistrate erred in applying to the accused the presumption arising under s. 7 of the Act. The presumption under s. 7 of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887) arises only where there has been an arrest and a search under s. 6 of the Act. As a First Class Magistrate has, under s. 6 of the Act, power to give authority under a special warrant to a police officer of the class designated in

GAMBLING—*concluded.*

the section to make the arrest and the search, the Legislature must be presumed to have intended that the Magistrate, First Class should have the authority to make the arrest and the search himself, if necessary. Where the Bombay Prevention of Gambling Act has provided for the manner or place of investigating or inquiring into any offence under it, its provisions must prevail and the Criminal Procedure Code must give way. Accordingly, no provision of the Code as to the authority empowered to issue a warrant for arrest or search, or the person to whom and the conditions under which such warrant may be issued can apply for the purposes of s. 7 of the Act. The authority, the persons and the conditions must be respectively those specifically mentioned in s. 6 of the Act and no other. But the special provision in s. 6 would still be subject to the general provisions of ss. 65 and 105 of the Code. When a Magistrate, First Class, or other officer mentioned in s. 6 of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887) himself acts under its provisions, instead of acting through an officer of the particular class prescribed therein under a special warrant, he must act strictly in compliance with those provisions. The first condition necessary to make an arrest and seizure, under the section, legal so as to bring in the operation of s. 7 is that where the Magistrate is acting on information, there must be a complaint made before him *on oath* to set him in motion. When a Magistrate, First Class, or other officer mentioned in s. 6 himself does the acts specified in clauses (*1*) to (*3*) of the section instead of issuing a special warrant, he must give evidence, because he supplies the place of the warrant and the warrant is a necessary part of the evidence for the prosecution. Where a Magistrate, First Class, himself makes an arrest and seizure under s. 6 of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887) he must himself "enter" the "house, room or place" with the assistance of such persons as may be found necessary. S. 6 of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887) must be construed strictly because s. 7 gives to an arrest and seizure under it an operation different from that of the general presumption of innocence in criminal cases. *Imperatrix* v. *Subhabhatta, Unrep. Cr. Cas. 825 : Cr. Rul. 68 of 1895*, followed. EMPEROR *v.* FERNAD (1907) . I. L. R. 31 Bom. 438

GAMBLING ACT (BENG. II OF 1867).

——s. 4—

See GAMBLING. . 11 C. W. N. 972

GAMING HOUSE.

See GAMBLING.

GANJAM AND VIZAGAPATAM AGENCY RULES.

—Limitation Act (XV of 1877), Sch. II, Art. 4, does not apply when act complained of is a nullity—Ganjam and Vizagapatam Agency rules, Act XXIV of 1839, rule 20—High Court may interfere when Agent decides wrongly on question of limitation.—An erroneous decision by an Agent acting under the Ganjam and Vizagapatam Agency Rules, on a question of limitation is a 'special ground' which will authorise an interference by the High Court under rule 20 of such Rules, Art. 14, Sch. II of the Limitation Act, does not apply to an act done by a Government officer, when such act purports to be done in pursuance of an order, but, in fact, owing to a mistake, is not so done. Such an act is a nullity which need not be set aside. MAHARAJA OF VIZIANAGRAM *v.* SATRUCHERLA RAJU (1906).

I. L. R. 30 Mad. 280

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——whether a necessary party—

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GRIEVOUS HURT.

See PENAL CODE, SS. 304 AND 325.

I. L. R. 29 All. 282

—Penal Code (Act XLV of 1860), ss. 304 and 325—Assault by three persons armed with lathis—Intention—Culpable homicide—Grievous hurt.—

GRIEVOUS HURT - *concluded.*

Three persons attacked a fourth with lathis, and one of the assailants struck a blow which fractured the skull of the person attacked and caused his death, but the evidence left it in doubt as to which of the three assailants struck that blow. *Held*, that the offence of which the three assailants were guilty was grievous hurt rather than culpable homicide not amounting to murder. *Queen-Empress* v. *Duma Baidya, I L. R. 19 Mad. 483*, followed. EMPEROR v. BHOLA SINGH (1907) . **I. L. R. 29 All. 282**

GUARDIAN.

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I. L. R. 30 Mad. 145

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I. L. R. 34 Calc. 892

1. APPOINTMENT.

1.—*Guardian and Wards Act (VIII of 1890), s. 10—Guardian and minor—Discretion of Court as to appointment of guardian.*—In this case the High Court set aside the appointment of the father as guardian of his own daughter, aged 10 years, upon the grounds chiefly that the father had married again and that under the circumstances the child was likely to be happier with her maternal grandmother with whom she had been living since the age of 5, than with her father. BINDO v. SHAM LAL (1906).
I. L. R. 29 All. 210

2.—*Minor—Guardian and Wards Act (VIII of 1890), s. 7—Sonthal Parganas—Power of the District Judge to appoint the Deputy Commissioner as guardian when holding simultaneously the offices of District Judge and Deputy Commissioner.*—The Deputy Commissioner of the Sonthal Parganas, being in the position of the Collector, is not incompetent to apply, as such, for the appointment of a guardian to a minor under the provisions of the Guardian and Wards Act, even though the application would be to himself in his capacity as a District Judge; and the District Judge is not precluded from appointing the Deputy Commissioner as guardian to the minor, even though he himself may hold the latter office. KESHOBATI KUMARI v. SATYA NARAIN SINGH (1907) . . **I. L. R. 34 Calc. 569**

GUARDIAN—*continued.*

3.—*Guardian and Wards Act (VIII of 1890), s. 52—Act No. IX of 1875 (Indian Majority Act), s. 3—Guardian and minor—Effect of appointment of guardian—Civil Procedure Code, s. 440.*—Where a guardian has once been appointed under the provisions of Act No. VIII of 1890, the attainment of majority by the ward is postponed until he reaches the age of twenty-one years notwithstanding that the guardian appointed by the Court may be discharged before that time arrives. *Gordhandas Jadowji* v. *Harivalubhdas Bhaidas, I. L. R. 21 Bom. 281*, followed. *Patesri Partap Narain Singh* v. *Champa Lal, Weekly Notes, 1891, 118*, distinguished. SADHO LAL v. MURLIDHAR (1907).
I. L. R. 29 All. 672

4.—*Guardian of minor "appointed by an authority competent in this behalf," meaning of—Powers of a Hindu father to appoint a testamentary guardian to his minor son—Indian Succession Act, s. 47, not applicable to the will of a Hindu.*—Assuming that a Hindu father has power to appoint a testamentary guardian, it is not by virtue of any statute; for s. 47 of the Indian Succession Act does not apply to the will of a Hindu. If, therefore, the power exists it must be under Hindu Law as distinct from statute. It would not be in accordance with the ordinary use of language to speak of a father, whose power (if any) rests on the General Hindu Law as "an authority competent in that behalf." It is clear that s. 440 of the Civil Procedure Code does not apply to all guardians, for it would be impossible to suggest that it applies to natural guardians. BUDHILAL v. MORARJI (1907).
I. L. R. 31 Bom. 413

2. DUTIES AND POWERS OF GUARDIANS.

5.—*Minor—Account, suit for—Guardian's power to bind minor—Advances made to guardian for minor's benefit—Principal and agent—Advances made by agent to guardian of principal.*—A guardian cannot bind his minor ward by a personal covenant. But where a minor comes to Court to have an account taken as between himself and his agent, and it is found on taking the account that the agent has made advances to the guardian and the advances have been applied for the benefit of the minor, the agent ought to be allowed those advances in taking the accounts. *Waghela Rajsanji* v. *Shekh Masludin, I. L. R. 11 Bom. 551*, distinguished. SURENDRA NATH SARKAR v. ATUL CHANDRA ROY (1907) . . **I. L. R. 34 Calc. 892**

GUARDIAN—*concluded.*

6.—*Transfer of Property Act (IV of 1882), s. 41—Transfer by ostensible owner—Owners of property transferred—Minors—Guardian incapable of assenting to apparent ownership of transferor.*—*Held*, that the guardian of a minor owner of immoveable property is incapable of consenting, even though such consent be express, to a third person holding himself out as owner of the minor's property, so as to enable a transferee from such person to claim the benefit of s. 41 of the Transfer of Property Act, 1882. DAMBAR SINGH *v.* JAWITRI KUNWAR (1907) . . . **I. L. R. 29 All. 292**

3. LIABILITIES OF GUARDIANS.

7.—*Guardian and ward—Guardian—Liability of guardian to render account—Suit for account against guardian—Guardian and Wards Act (VIII of 1890), s. 41, cl. 4.*—Where a new guardian appointed under the Guardian and Wards Act had not inspected the accounts submitted by the previous guardian, the latter having failed to pay the process fee for service on the former of notice to inspect them, and the Court had made no order under s. 41 (4) of the Act discharging the previous guardian: *Held*, that a suit for account would lie against the previous guardian. A guardian is bound to render accounts in respect of all the properties of which he took possession as guardian under the order of the Court, and for the purpose of taking the accounts an inquiry must be made as to what those properties are. KANIZ FATIMA *v.* SAJJAD HOSAIN (1906) . . . **I. L. R. 34 Calc. 211**

GUARDIAN AD LITEM.

See CIVIL PROCEDURE CODE, s. 443.
I. L. R. 29 All. 290

1.—*Civil Procedure Code, s. 444—Duty of Court as regards appointment of a guardian ad litem.*—Where the defendant or respondent to a suit or appeal is a minor it is the duty of the Court not only to appoint a guardian, but to satisfy itself that the proposed guardian is a fit and proper person to represent the minor, to put in a proper defence and generally to act in the interests of the minor. The duty of the Court is not a mere matter of form. *Bibi Walian* v. *Banke Behari Parshad Singh, I. L. R. 21 Bom. 281*, distinguished. RAMCHANDRA DAS *v.* JOTI PRASAD (1907).
I. L. R. 29 All. 675

2.—*Civil Procedure Code, s. 457—Appointment of married woman whose husband is alive.*—In no case can a married woman whose husband is living be appointed as a guardian *ad litem*, and if such an appointment is made *de facto*, such apparent appointment is not a mere irregularity. *Sham Lal* v. *Ghasita, I L. R. 23 All. 459*, followed. *Kachayi Kuttiali Haji* v. *Udumpumthala Kunhi Puttra, I. L. R. 29 Mad. 58*, dissented from. KUNDAN LAL *v.* GAJADHAR LAL (1907).
I. L. R. 29 All. 728

GUARDIAN AD LITEM—*concluded.*

3.—*Shia Mahomedan lady—Inherent power of Civil Court.*—The power to appoint a guardian *ad litem* is inherent in every Court of civil jurisdiction. Where therefore a Shia Mahomedan lady had been appointed by a Civil Court guardian *ad litem* of her infant children, it was held that the appointment must be presumed to be valid and that a sale in execution of the decree obtained in such a suit was binding on the minors. MUZAFFAR ALI KHAN *v.* PARBATI (1907) . . . **I. L. R. 29 All. 640**

4.—*Guardian ad litem—Appointment of guardian ad litem other than certificated guardian.*—*Held*, that the appointment, apparently by an oversight, as guardian *ad litem* to a minor defendant of a person other than the certificated guardian amounted to no more than an irregularity and would not of itself violate either a decree passed in a suit or a sale consequent upon such decree. DAMMAR SINGH *v.* PIRBHU SINGH (1907) . **I. L. R. 29 All. 290**

GUARDIAN AND WARD.

See GUARDIAN.

See GUARDIAN AND WARDS ACT (VIII OF 1890), S. 10. **I. L. R. 29 All. 210**

1.—*Contract—Specific performance—Specific performance of contract not favourable to minor refused.*—The certificated guardian of a minor, finding that it was necessary that some of the minor's property should be sold, applied for permission to the District Judge, who sanctioned the sale for a price of R725. Subsequently the guardian discovered that this was an inadequate price, and having received an offer of R825 for the property, went again to the District Judge for sanction to the second contract, obtained sanction and sold the property for R825. *Held*, that the former contract being to the detriment of the minor could not be specifically enforced. CHITTAR MAL *v.* JAGAN NATH PRASAD (1906) . . . **I. L. R. 29 All. 213**

2.—*Limitation Act (XV of 1877), s. 28, Sch. II, Art. 44—'Sale' in Art. 44 not confined to transfer of absolute ownership only—Finding in previous suit of the invalidity of a sale does not dispense with the necessity of suing to set aside such sale.*—The term 'sale' in Art. 44 of Sch. II of the Limitation Act is not confined to an assignment of absolute ownership only but means an assignment for a price of the ward's interest whatever that may be. Art. 44 will therefore apply to a suit by the ward to set aside an assignment by his guardian of his right as mortgagee. *Gnanasambhanda Pandara Sannadhi* v. *Velu Pandaram, I. L. R. 23 Mad. 279*, referred to and followed. A suit by a ward to recover properties improperly alienated by the guardian will be governed by Art. 44 and the period of limitation will not be that prescribed for a suit for possession of immoveable property. The fact that in a previous suit by the alienee against the ward, to

GUARDIAN AND WARD—*concluded.*

recover some properties which had not passed to his possession under the transfer, the alienation was found invalid will not relieve the ward from the consequences of his failure to have the transfer set aside within the period allowed by law with regard to properties which had passed to the possession of the alienee. When at the time such previous suit was brought, the ward's right to such property had been extinguished under s 28 of the Limitation Act, the decision will not have the effect of reviving the extinguished right. *Lakshmi Dass* v. *Roop Laul, I. L. R. 30 Mad. 169*, distinguished. MADUGULA LATCHIAH v. PALLY MUKKALINGA (1907).

I. L. R. 30 Mad. 393

3.—*Guardian – Liability of guardian to render account—Suit for account against guardian – Guardian and Wards Act (VIII of 1890), s. 41, cl. 4.*—Where a new guardian appointed under the Guardian and Wards Act had not inspected the accounts submitted by the previous guardian, the latter having failed to pay the process fee for service on the former of notice to inspect them, and the Court had made no order under s. 41 (4) of the Act discharging the previous guardian: *Held*, that a suit for account would lie against the previous guardian. A guardian is bound to render account in respect of all the properties of which he took possession as guardian under order of the Court, and for the purpose of taking the accounts an inquiry must be made as to what those properties are. KANIZ FATIMA v. SAJJAD HOSAIN (1906) . . . . . **I. L. R. 34 Calc. 211**

4.—*Guardian and Wards Act, s. 52—Act No. IX of 1875 (Indian Majority Act), s.3—Guardian and minor—Effect of appointment of guardian—Civil Procedure Code, s. 440.*—Where a guardian has once been appointed under the provisions of Act VIII of 1890, the attainment of majority by the ward is postponed until he reaches the age of twenty-one years notwithstanding that the guardian appointed by the Court may be discharged before that time arrives. *Gordhandas Jadowji* v. *Harivalubhdas Bhaidas, I. L. R. 21 Bom. 281*, followed. *Patesri Partap Narain Singh* v. *Champa Lal, Weekly Notes, 1891, 118*, distinguished. SADHO LAL v. MURLIDHAR (1907). . **I. L. R. 29 All. 672**

GUARDIAN AND WARDS ACT (VIII OF 1890).

——s. 7—

See GUARDIAN . **I. L. R. 34 Calc. 569**

——s. 41, cl. 4—

See GUARDIAN AND WARD.

I. L. R. 34 Calc. 211

——ss. 47, 48—

—*Indian Majority Act (IX of 1875), s. 3—Power of Chamber Judge to alter, vary, modify or set aside orders made by his predecessor in Chamber under the Guardian and Wards Act – Period of minority on vacating of such orders does not extend to 20 years.*—S. 48 of the Guardian and

GUARDIAN AND WARDS ACT (VIII OF 1890)—*concluded.*

Wards Act immediately following as it does the section which provides for appeals is intended to give finality to contested orders and to enact that, when once an order is made, except as provided in s. 47 and saving the provisions of s. 622 of the Civil Procedure Code, the order shall be final and shall not be contested by a substantive suit or by any other form of litigation. The Guardian and Wards Act makes no provision for setting aside an order made under the Act, but judging from the analogy of English practice there can be no doubt that in these miscellaneous matters the Judge sitting in Chambers and making orders on petitions and applications has the power to vary, alter, modify or set aside his own orders when he finds that the order is one which ought not to have been made and that the order is one that requires in the interests of justice to be dealt with in that way. If an order is made under the Guardian and Wards Act and such order is subsequently set aside, the period of minority is not extended to 21 years under s. 3 of the Indian Majority Act. NAGARDAS v. ANANDBAO (1907).

I. L. R. 31 Bom. 590

——s. 52—

See GUARDIAN AND WARD.

I. L. R. 29 All. 672

H

HÂT.

——holding of—

See CRIMINAL PROCEDURE CODE, s. 144.

11 C. W. N. 223

——sale of articles in—

—*Hât—Right of proprietor to prohibit sale of particular articles by persons not permanent stall-keepers—Rioting—Hurt.*—The proprietors of a market have the right to direct that any particular kinds of things should not be sold there by a person who is not a permanent shop-keeper. RAJ KUMAR CHUCKERBUTTY v. EMPEROR (1906).

11 C. W. N. 28

HATCHITTA.

—*Stamp Act (II of 1899), Sch. I, Art. 5, cl. (b) and Art. 1 and s. 23—Hatchitta, containing implied promise to pay interest, whether acknowledgment of debt, or agreement or memorandum of agreement – Stamp-duty.*—A *hatchitta* ran as follows:—"Account *E B* (the debtor). The year 1312 B. S. Interest on this amount at the rate of one anna per month per rupee." Then followed the credit and the debit entries. *Held*, that there was an implied promise to pay interest, and the document ought to be stamped as an agreement or a memorandum of agreement with an eight anna stamp and not as an acknowledgment of a debt with a one anna stamp only. *Udit Upadhya* v.

HATCHITTA—*concluded.*

Bhawani Din, I. L. R. 27 All. 84, dissented from. *Luxumi Bai* v. *Ganesh Raghu Nath, I. L. R. 25 Bom. 373,* followed. *Koonja Mohun Doss* v. *Krishna Chandra Saha, 25 W. R. 361,* and *Brojendra Kumar* v. *Brohmomoyi Chaudhurani, I. L. R. 4 Calc. 885,* distinguished. *Sambhu Chandra Bepari* v. *Krishna Churn Bepari, I. L. R. 26 Calc. 179,* referred to ENATULLAH BISWAS *v.* GAJARUDDI BISWAS (1907) . **11 C. W. N. 1122**

HEARSAY EVIDENCE.

—*Evidence Act (I of 1872), s. 6, Illus. (a)—Murder—Res gestæ—Statement of eye-witness shortly after occurrence, if relevant—Same transaction Interval of time—Physical and mental condition of person making statement.*—Hearsay evidence of the statement of a by-stander as to an occurrence would be admissible in evidence as a part of the *res gestæ* only if it was made at the time the transaction was taking place or so shortly before or after it as to form part of the transaction. If the transaction had terminated when the statement was made, it would be irrelevant. In this case a chowkidar deposed that one *G* ran up to him and stated that he had seen the accused persons murder his mistress whom he had met by assignation and that he had run away from the place of occurrence to save his life. What interval of time passed between the murder and the alleged statement did not appear. *G* seemed to be quite sensible when he made the statement and the condition of his mind did not appear to be such as to exclude the supposition of his fabricating evidence or being tutored. *Held,* that the statement was inadmissible in evidence. *Sarat Dhobni's case, I. L. R. 10 Calc. 302,* distinguished. CHAIN MAHTO *v.* EMPEROR (1906) . . . . . **11 C. W. N. 266**

HERITABILITY.

See NON-OCCUPANCY RAIYAT.
I. L. R. 34 Calc. 516

See UNDER-RAIYAT. . **11 C. W. N. 519**

HERITABLE AND TRANSFERABLE RIGHT.

See BIRT ZEMINDARS.
I. L. R. 29 All. 708; L. R. 34 I. A. 142

HIGH COURT, DELEGATION OF POWER BY.

See LEAVE TO SUE.
I. L. R. 34 Calc. 619

HIGH COURT, DISCIPLINARY POWERS OF.

See ADVOCATE. . **I. L. R. 29 All. 95**

HIGH COURT, JURISDICTION OF.

See ARBITRATION ACT.
I. L. R. 31 Bom. 236

See CRIMINAL PROCEDURE CODE (V OF 1898), S. 145. . **11 C. W. N. 198**

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 145, 146.
I. L. R. 34 Calc. 840

See JURISDICTION.
I. L. R. 34 Calc. 636

See REVISION. **I. L. R. 29 All. 563**

1.—*Criminal Revisional Jurisdiction—Calcutta Municipal Act (Bengal Act III of 1899), s. 645 and s. 408—General Committee, power of the—Owner, determination of.*—By s. 645 of the Calcutta Municipal Act (Bengal Act III of 1899) the Legislature has given power to the General Committee of the Calcutta Municipal Commissioners to determine in a case, where there are gradations of owners of persons, who may be regarded as owners or where there is a doubt as to who is the owner bound to perform any duty imposed by the Act, which of such owners shall be deemed to be bound to perform such duty. That discretion having been by law vested in the General Committee, the High Court, in the exercise of its criminal revisional jurisdiction, has no power to set aside or question the act done in the exercise of that discretion, if those acts have otherwise been done in accordance with the provisions of the law. SHAMUL DHONE DUTT *v.* CORPORATION OF CALCUTTA (1906)
I. L. R. 34 Calc. 30

2.—*Power to revise orders directing prosecution—Jurisdiction of the Sessions Judge to set aside such orders—Criminal Procedure Code (Act V of 1898), ss. 439, 476—Indian Penal Code (Act XLV of 1860), s. 211.*—A Sessions Judge has no power to set aside an order passed by a Magistrate under s. 476 of the Criminal Procedure Code. But the High Court has power to revise such orders, whether passed by Criminal or a Civil Court, under s. 439 of the Criminal Procedure Code or under its general powers of superintendence, if a case for interference is made out; this power is not taken away by s. 476, cl. (2). *Queen-Empress* v. *Srinivasalu Naidu, I. L. R. 21 Mad. 124,* referred to. *Eranhali Athan* v. *King-Emperor, I. L. R. 26 Mad. 98,* dissented from. EMPEROR *v.* GOPAL BARIK (1906) . . . **I. L. R. 34 Calc. 42**

3.—*Superintendence of High Court—Criminal proceedings, stay of, when civil suit on same facts pending.*—The defendant in a civil suit ought not to be allowed to prejudice the trial of such suit by launching and proceeding with a criminal prosecution on the same facts against the plaintiff and his witnesses and such proceedings if launched, will be stayed by the High Court in the exercise of its powers of superintendence. *Eudara Viranna* v. *The Queen, I. L. R. 3 Mad. 400,* distinguished; *In re Devaji valad Bhavani, I. L. R. 18 Bom. 581,* distinguished; and *Raj Kumari Debi* v.

HIGH COURT, JURISDICTION OF—*concluded.*

Bamasundari Debi, I. L. R. 23 Calc. 610, distinguished. ANNA AYYAR *v.* EMPEROR (1906).
I. L. R. 30 Mad. 226

HIGH COURT, REVISIONAL POWERS OF.

See HINDU LAW—INHERITANCE.
I. L. R. 34 Calc. 929

HIGH COURT CIVIL CIRCULAR, RULE 80.

See LIMITATION ACT.
I. L. R. 31 Bom. 162

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HINDU LAW.

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I. L. R. 29 All. 1

HINDU LAW—ADOPTION.

1.—*Jains—Adoption—Custom—Authority of widow to adopt—Adoption of married man.—Held*, that according to the law and custom prevailing amongst the Jain community, (*1*) a widow has power to adopt a son to her deceased husband without special authority to that effect, and (2) a married man may lawfully be adopted. *Maharaja Gobind Nath Ray* v. *Gulab Chand*, 5 *S. D. A. 276; Sheo Singh Rai* v. *Dakho, I. L. R. 1 All. 688; Lakhmi Chand* v. *Gatto Bai, I. L. R. 8 All. 319; Bhagwan Singh* v. *Bhagwan Singh, I. L. R. 17 All. 294*, and *21 All. 419; Raje Vyankatrav Anandram Nimbalkar* v. *Jyavantrav, 4 Bom. H. C. A. C. J. 191; Nathaji Krishnaji* v. *Hari Jagoji, 8 Bom. H. C. A. C. J. 67; Sadashiv Moreshvar Ghate* v. *Hari Moreshvar Ghate, 11 Bom. H. C. 190; Lakhshmappa* v. *Ramava, 12 Bom. H. C. 364*, and *Dharma Dagu* v. *Ramkrishna Chimnaji, I. L. R. 10 Bom. 80*, referred to. MANOHAR LAL *v.* BANARSI DAS (1907).
I. L. R. 29 All. 495

HINDU LAW—ADOPTION—*continued.*

2.—*When sapinda consents on condition that adopted son should not claim the property of his adoptive father, adoption not thereby invalid.*—When a sapinda in giving his consent to an adoption, protects himself from loss by stipulating that the adopted son should not claim a share in the joint family property in the enjoyment of such sapinda, the consent of the sapinda is not given from corrupt or improper motives, and the adoption will be good. *Rami Reddi* v. *Rengamma, 11 M. L. J. 29*, distinguished. SRINIVASA AIYANGAR *v.* RANGASAMI AYYANGAR (1907) . I. L. R. 30 Mad. 450

3.—*Adoption during wife's pregnancy.—Held*, that the fact that at the time of making an adoption the wife of the adopting father is pregnant does not affect the validity of the adoption. *Nagabhushanam* v. *Seshammagaru, I. L. R. 3 Mad. 180*, and *Hanmant Ramchandra* v. *Bhimacharya, I. L. R. 12 Bom. 105*, followed. *Narayana Reddi* v. *Vardachala Reddi, M. S. D. (1859) 97*, dissented from. DAULAT RAM *v.* RAM LAL (1907).
I. L. R. 29 All. 310

4.—*Adoption by widow with authority of husband - Adoption after birth of posthumous son to sole surviving co-parcener—Joint family—Mitakshara law—Gift to daughter out of joint property—Gift out of income—Right to partition.*—Two brothers formed a joint family governed by the Mitakshara law as in force in Bombay and were possessed of considerable ancestral property. One of them died on 14th September 1900 without male issue but leaving his widow pregnant. The other brother died on 17th December 1900 leaving a will dated 30th November, by which he purported to make certain dispositions of the family property, and also authorized his widow to adopt a son with the consent of persons specifically mentioned in the will: "such adoption to be made even though a son is born to my brother's widow." On 18th December his brother's widow gave birth to a son, the plaintiff. On 17th February 1901, the testator's widow adopted a son to her husband with the consents directed in the will. It was contended that on the face of the will the adoption was illegal and void because the power to adopt was part of a plan for the disposition of the family property which was in contravention of the law, and the power was dependent on that plan having effect. *Held*, on the construction of the will, that the dispositions made were within the testator's competence at the date of the will and at the date of his death; they were only liable to be defeated

HINDU LAW—ADOPTION—*continued.*

in one event (which in fact happened), namely, his brother's widow giving birth to a son, and the will expressly said that, in that case, the adoption should still be made. It was also contended that at the time the adoption took place the family property had become vested absolutely and exclusively in the plaintiff and that the adoption could not divest it. *Held,* that the adoption being made with the authority of the husband was valid, and under the circumstances the plaintiff took the property subject to the adoption, and the adopted son became on his adoption a co-parcener with the plaintiff in the family property. *Sri Virada Pratapa Raghunada Deo* v. *Sri Brozo Kishore Patta Deo, L. R 3 I. A. 154,* followed. *Held,* also, that a sum of R20,000 given to his daughter, one of the defendants, by the testator and transferred to her in his life-time, was a valid gift and justified by the circumstances of the case and as being made not out of capital but out of income. *Held,* further, that partition of the property which was asked for in case the plaintiff had no exclusive right to it was rightly refused by the Courts in India. BACHOO *v.* MANKOREBAI (1907).

I. L. R. 31 Bom. 373; L. R. 34 I. A. 107

5.—*Second adoption after death of widow of first adopted son—Validity—Will—Construction—Absolute gift—Restrictive words, absence of—Gift over—Indian Succession Act (X of 1865), ss. 82, 111.*—The power left to a Hindu widow to adopt more than one son in succession in the event of the previously adopted son dying without male issue, comes to an end when the first adopted son dies leaving a widow as his heiress. A second adoption made after the adoptive mother has succeeded to the estate on the death of the widow of the first adopted son is therefore invalid. *Pudma Kumari* v. *Court of Wards, L. R. 8 I. A. 229: s.c. I. L. R. 8 Calc. 302; Thayammal* v. *Venkatarama, L. R. 14 I. A. 67; s.c. I. L. R. 10 Mad. 205,* followed. *Bykanta Monee* v. *Kristo Soonderee Roy, 7 W. R. 392; Manik Chand* v. *Jagat Settani, I. L. R. 17 Calc. 518; Kannepalli* v. *Pucha, 10 C. W. N. 921: s.c. 4 C. L. J. 171,* referred to. MANIKYA MALA BOSE *v.* NANDA KUMAR BOSE (1906) . . . . . **11 C. W. N. 12**

6.—*Adoption with consent of Sapindas—Assent given on the strength of representation by widow that she had her husband's authority to adopt—Such authority found on evidence not to have been proved—Omission to ask consent of one of two of husband's nearest kinsmen, effect of.*—The first appellant was the widow of a deceased Brahman who was separate in estate from his kinsmen two of whom were the respondents who were brothers of the deceased and also divided between themselves. The widow, representing that she had the oral authority of her husband to adopt a son, obtained the assent of the second respondent, the elder of the two brothers, who executed a deed purporting to ratify the husband's authority, and this was signed also by some remoter kinsmen of the husband; and the widow thereupon

HINDU LAW—ADOPTION—*continued.*

purported to adopt the second appellant as a son to her husband. The first respondent was not asked for his consent, the widow alleging, as her reason for omitting to ask him, that she knew from his attitude towards the proposed adoption that he would refuse. In a suit brought by the first respondent to have the adoption declared void both the lower Courts found that there was not sufficient evidence to prove that the widow had any authority from her husband:—*Held,* by the Judicial Committee (upholding the judgment of the High Court) that the adoption was not made with the independent approval of the natural advisers of the widow, the assent of the kinsmen who were asked having been given not in the exercise of an independent judgment on the expediency of the proposed adoption, but as a ratification of the husband's authority which did not exist; and the appellants could not now set up such ratification as an independent ground of defence. Nor had the widow justified her omission to ask for the authority of the first respondent, one of the nearest kinsmen of her husband, and holding an important position in the family. To consult him was essential to her obtaining the mind of the kinsmen on the adoption, and her reason for not consulting him was one which she was not entitled to give. Her case therefore failed in the quality of the consents actually obtained, and the adoption was not valid. JONALAGADDA VENKAMMA *v.* JONALAGADDA SUBRAMANIAM (1906).

I. L. R. 30 Mad. 50; L. R. 34 I. A. 22

7.—*Gayawal priests—Custom—Agreement between adoptive mother and adopted son, not depending upon the validity of the adoption—Revocation of agreement—Contract of service—Termination on notice—Employment of priest.*—Plaintiff, the widow of a Gayawal priest, purported to adopt the defendant, a married man, twenty-four years of age, in accordance with an alleged custom by which it was said the childless widow of a Gayawal priest is allowed to make such an adoption in order that the adopted son may get his feet worshipped by the clientele of her family for her own immediate benefit and ultimately for the benefit of the adopted son who takes by inheritance her estate as well as the estate of her husband. The son so adopted was, it was further alleged, liable according to the said custom to be dismissed for misconduct. At the time of the adoption the plaintiff executed a deed which recited the fact of the adoption having been made pursuant to the above custom and specified the circumstances under which the adoption might be cancelled. The alleged custom not having been established: *Held,* that the adoption was not valid either as a *dattak* or a *kritima* adoption, the necessary rites and ceremonies not having been performed and the defendant having already been invested with the sacred thread, married and had a son at the time of adoption, that the transaction was essentially a contract to enable the plaintiff to keep up her connection, spiritual as well as worldly, with her husband's clientele and to enjoy the benefits resulting from such connection, and this contract did not depend

HINDU LAW—ADOPTION—*concluded.*

for its validity upon the validity of the adoption and was consequently enforceable. That the contract was not determinable at the mere choice of the plaintiff. The contingencies which in the contemplation of the parties was to terminate the contract not having arisen, the plaintiff was not entitled to rescind the contract. *Llanelly* v. *L. and N.-W. Railway, L. R. 8 Ch. App. 942, 949,* and *St. Barnabas* v. *M. I. Electric Co., 40 L. R. A. 388,* referred to. The contract in this case was not a contract of service terminable on notice. *Semble*: The obligation to employ a specified priest is rather a matter of conscience than a juristic obligation enforceable in a Court of law. LACHMI DAI MOHUTAIN *v.* KISSEN LALL PAHARI MAHATON GAYA (1906) . . . . . 11 C. W. N. 147

HINDU LAW—ALIENATION.

1.—*Alienation by widow—Legal necessity—Order for interest or decree in execution where decree did not allow interest—Sum for interest made part of consideration for sale deed—Res judicata—Decision in suit for pre-emption—Civil Procedure Code, s 13.*—A Hindu widow in possession of her husband's immoveable property for a widow's estate executed, on 22nd December 1868, a deed of sale of it in favour of a creditor of her husband under a decree, dated 12th July 1861. No future interest was allowed by that decree, but on 22nd October 1866 the decree-holder in execution of it obtained from the Court of the Deputy Commissioner an order for interest on the decree, which order was however set aside by the Judicial Commissioner on 15th September 1869 on the ground that a Court executing a decree had no power to alter or add to it. The consideration for the deed of sale, which was executed whilst the order granting interest was in force, was made up of R7,080 the amount her husband was liable for under the decree, R5,638 for interest on the decree, and a sum of R7,280 in cash. On 23rd December 1869, the plaintiff as reversionary heir of the husband brought a suit against the vendee for pre-emption, but that suit was dismissed on the ground that his right of pre-emption was not established. The widow died in 1894 and in 1899 the plaintiff brought the present suit for possession of the property and for mesne profits from her death. The defendants were the Deputy Commissioner as representing the Court of Wards, into whose charge the vendee's estate had come, and the purchaser from the Court of Wards of the greater portion of the property in suit. The defence was that the alienation was made for legal necessity, and that the suit was barred by the decision in the pre-emption suit, which operated as *res judicata.* Both Courts below found on the facts that the item of R7,080 was justified by legal necessity, and that the advance of the sum in cash as part of the consideration was not proved. *Held,* by the Judicial Committee, that the defendants, claiming as they did under the vendee, and standing therefore in no higher position than his, were not entitled to base a

HINDU LAW—ALIENATION—*continued.*

claim to the property upon an order made in the vendee's favour, but subsequently set aside: under the circumstances the doctrine of legal necessity could not be extended to the item for interest. There should be a decree for possession and for the balance of mesne profits after deducting the R7,08 · for which the property was liable. *Held,* also, that all that was in issue in the former suit was the right of pre-emption as to the widow's interest only in the property, and that the effect of the deed of sale on the reversion could not properly have been made a ground of attack in that suit: the present suit was therefore not barred by s. 13 of the Civil Procedure Code. DEPUTY COMMISSIONER OF KHERI *v.* KHANJAN SINGH (1907) . . I. L. R. 29 All. 331; L. R. 34 I. A. 164

2.—*Mitakshara family—Liability of son for father's debt—Alienation of family property by father—Mortgage—Antecedent debt—Suit by mortgagee against father and sons for sale of mortgaged property—Limitation—Limitation Act (XV of 1877), Art. 132, Sch. II.*—Where a debt has been incurred by the *karta* of a Mitakshara family for family purposes and the property of the family has been alienated to defray the debt, the sons cannot set up their rights against the purchaser, unless they are able to prove that the money, in respect of which the alienation was made, was borrowed for immoral purposes; there is no distinction between debts incurred to pay off antecedent debts and those incurred to meet present necessities. The principle is applicable to partial alienations, such as mortgages. In a joint Mitakshara family composed of father and sons, the former executed a mortgage bond on receipt of a loan, which the sons failed to prove to have been taken for immoral purposes. *Held,* that the mortgage bond was binding on the sons and that the limitation applicable to a suit on the bond in respect of the sons as well as in respect of the father, was that provided by Art. 132, Sch. II of the Limitation Act. *Nanomi Babuasin* v. *Modhun Mohun, I. L. R. 13 Calc. 21: L. R. 13 I. A. 1; Bhagbut Pershad Singh* v. *Girja Koer, I. L. R. 15 Calc. 717: L. R. 15 I. A. 99,* referred to. *Luchmun Dass* v. *Giridhur Chowdhry, I. L. R. 5 Calc. 855; Surja Prasad* v. *Golab Chand, I. L. R. 27 Calc. 762,* and *Venkataramanaya Pantulu* v. *Venkataramana Doss Pantulu, I. L. R. 29 Mad. 200,* not followed. MAHESWAR DUTT TEWARI *v.* KISHUN SINGH (1907). I. L. R. 34 Calc. 184

3.—*Mitakshara family—Alienation of family property by father—Liability of son for father's debt—Mortgage of joint-family property—Suit by mortgagee against father and son for sale of mortgaged property - Decree, form of.*—In a joint Mitakshara family consisting of a father and his minor son, the father mortgaged property belonging to the joint family. It was not proved that there was any legal necessity for the loan or any inquiry by the lender, nor that the loan was contracted for illegal or immoral purposes. In a suit

HINDU LAW—ALIENATION—*concluded.*

by the mortgagee against the father and the son to enforce the mortgage, commenced within six years from the due date fixed by the mortgage: *Held*, that the mortgagee was entitled to have the security enforced as against the share of the mortgagor and also to a decree which would enable him to realize the debt by the sale of the share of the son in the ancestral property. *Luchmun Dass* v. *Giridhur Chowdhry, I. L. R. 5 Calc. 855; Khalilul Rahman* v. *Gobind Pershad, I. L. R. 20 Calc. 328*, followed. The decision in *Luchman Dass* v. *Giridhur Chowdhry, I. L. R. 5 Calc. 855*, is binding on the Court. There is a distinction between the position of the son in a suit in which a mortgage by his father is sought to be enforced against his share in the property, and his position after the alienation has been completed by an execution sale. *Nanomi Babuasin* v. *Modhun Mohun, I. L. R. 13 Calc. 21; L. R. 13 I. A. 1; Bhagbut Pershad Singh* v. *Girja Koer, I. L. R. 15 Calc. 717: L. R. 15 I. A. 99; Suraj Bunsi Koer* v. *Sheo Pershad Singh, I. L. R. 5 Calc. 148: L. R. 6 I. A. 88; Girdharee Lall* v. *Kantoo Lall, 14 B. L. R. 187: L. R. 1 I. A. 321; Jamna* v. *Nain Sukh, I. L. R. 9 All. 493*, referred to. *Maheswar Dutt Tewari* v. *Kishun Singh, I. L. R. 34 Calc. 184*, dissented from. KISHUN PERSHAD CHOWDHRY *v.* TIPAN PERSHAD SINGH (1907). **I. L. R. 34 Calc. 735**

4.—*Mitakshara—Alienation—Right of son to contest validity of alienations of ancestral property made by father or grandfather prior to son's birth—Mortgage of ancestral property—Son's right of redemption.*—Under the Mitakshara school of Hindu Law, a member of a joint family can contest the validity of the alienation by his father or grandfather only of such an interest in the ancestral property as existed at his birth and vested in him by his birth. Where there is a complete transfer of property by mortgage by the father or grandfather prior to the birth of such member, the only interest that may vest on birth is the equity of redemption. BHOLANATH KHETTRY *v.* KARTICK KISSEN DASS KHETTRY (1907).

I. L. R. 34 Calc. 372

5.—*Widow—Alienation—Suit by reversioner to set aside the alienation—Limitation—Limitation Act (XV of 1877), Sch. II, Art. 91.*—The plaintiff sued in 1904, as a reversioner, to recover possession of property from the defendant to whom it had been given by way of gift in 1894 by the widow of a preceding owner. It was found by both the lower Courts that the alienation was not justified by any necessity recognized by Hindu law. The defendant pleaded that the suit was barred by limitation. *Held*, that it was not open to the defendant to rely on Art. 91 of the Limitation Act (XV of 1877) as a bar to the suit. *Harihar Ojha* v. *Dasarathi Misra, I. L. R. 33 Calc. 257*, followed. RAKHMABAI *v.* KESHAV RAGHUNATH (1906) **I. L. R. 31 Bom. 1**

HINDU LAW—CONVERSION.

1.—*Change of religion—Effect of conversion of a member of a joint Hindu family to Muhammadanism—Regulation No. VII of 1832, s. 9—Compromise—Effect of compromise entered into by a Hindu female with a limited estate.*—*Held*, that Regulation No. VII of 1832 did not abrogate the Hindu law as to the consequences of apostacy, but merely laid down for the guidance of the Judge a rule under which he might refuse to enforce these consequences. Where, therefore, in a joint Hindu family consisting of a father and one son, the father was converted to Muhammadanism in the year 1845, the immediate effect of such conversion was to make the son sole owner of the property which up to that time had belonged jointly to him and his father. *Held*, also, that a compromise made by a person holding a Hindu widow's or Hindu daughter's estate in the property of her deceased husband or father, is not binding on the reversioners, even though it has been followed by a decree of Court, nor is a decree on an arbitration award, one of the parties to the submission having been a Hindu widow, or daughter; but the reversioners can only be bound by a decree made after full contest in a *bonâ fide* litigation. *Imrit Konwur* v. *Roop Narain Singh, 6 C. L. R. 76; Sheo Narain Singh* v. *Khurgo Koerry, 10 C. L. R. 337; Jeram Laljee* v. *Veerbai, 5 Bom. L. R. 885; Sant Kumar* v. *Deo Saran, I. L. R. 8 All. 365; Ram Sarup* v. *Ram Dei, Weekly Notes, 1907, 33*, and *Stapilton* v. *Stapilton, 1 White and Tudor 230*, referred to. GOBIND KRISHNA NARAIN *v.* KHUNNI LAL (1907)

I. L. R. 29 All. 487

HINDU LAW—DEBTS.

1.—*Mesne profits.*—Under the Mitakshara, a son is under a pious obligation to discharge a decree for mesne profits obtained against his father by a person whom the latter wrongfully kept out of possession of immoveable property. *Natasayyan* v. *Ponnusami, I. L. R. 16 Mad. 99*, approved. PEARY LAL SINHA *v.* CHANDI CHARAN SINHA (1906).

11 C. W. N. 163

HINDU LAW—ENDOWMENT.

1.—*Religious endowment—Right to appoint manager.*—According to Hindu law, when a religious endowment has been founded, the right to appoint a manager or superintendent remains in the founder and his descendants, unless there is evidence to show that the founder or his descendants have made any inconsistent disposition. *Gossamee Sree Greedharreejee* v. *Rumanlolljee Gossamee, L. R. 16 I. A. 137; Sheoratan Kunwari* v. *Ram Pargash, I. L. R. 18 All. 227*, and *Mussumat Jai Bansi Kunwar* v. *Chatter Dhari Singh, 5 B. L. R. 181*, followed. SHEO PRASAD *v.* AYA RAM (1907).

I. L. R. 29 All. 663

HINDU LAW—GIFT.

1.—*Mitakshara gift—Gift of considerable portion of moveable or immoveable joint family pro-*

HINDU LAW—GIFT—*concluded.*

perty invalid—Acquiescence.—An undivided member of a Hindu family governed by the Mitakshara Law has no power to alienate any considerable portion of the moveable or immoveable properties belonging to the joint family by way of gift to the female members of the family. When the portion so alienated is not severed from the family property, but the income alone is given to the donees, the objecting co-parcener is not barred by acquiescence from questioning the alienation merely because he did not object to the payment of such income. *Bachoo Harkisondas* v. *Minkorebai, I. L. R. 29 Bom. 51,* distinguished. *Ramasawmy Ayyar* v. *Vengidusami Ayyar, I. L. R. 22 Mad. 113,* distinguished. KAMAKSHI AMMAL *v.* CHAKRAPANY CHETTIAR (1907) . . **I. L. R. 30 Mad. 452**

2.—*Gift to widow, construction of.*—*A* and *B* brought a suit against *C* for division of what *A* and *B* alleged to be joint family property and *C* alleged to be his divided property. *A* died and *V*, his widow, was brought on the record as his representative. *V* and *B* withdrew from the suit on *C* giving them jointly some lands under a deed, which recited that *C* gave the lands as a matter of favour at the request of *V* and *B* to be enjoyed by *V* and *B* in equal portions with the right of gift, sale, etc. *V* revised her share to *D*. In a suit by *B* to recover the lands from *D*: *Held, per* MILLER, *J.*—There was nothing in the circumstances of the case to raise any presumption based on the sex of *V* that the gift to *V* was one for life only, in the face of the express words of the deed which purport to convey an absolute estate: *Per* WALLIS, *J.*—In construing such documents, the situation of the parties and their rights at the time must be taken into consideration. There is nothing in the circumstances or the document to show that *C* intended to enlarge the widow's interest in the property given her to full ownership. The words 'you shall enjoy the said lands with the rights of gift, sale, etc.' do not necessarily indicate such an intention. *V* therefore took only a widow's estate in the properties given by the deed. *Dinonath Mukerji* v. *Gopal Churn Mukerji, 8 C. L. R. 57,* referred to; and *Sreemutty Rabutty Dossee* v. *Sibchunder Mullick, 6 Moo. I. A.*, 1 referred to. SAMBASIVA AYYAR *v.* VISVAM AYYAR (1907) . **I. L. R. 30 Mad. 356**

HINDU LAW—HUSBAND AND WIFE.

1.—*Conjugal rights, restitution of—Cruelty—Matrimonial offence—Safety of wife in peril.*—*Per* HARINGTON, *J.*—It would not be safe to say that whatever is a defence to an action for restitution of conjugal rights in the case of a European would also be in every case a defence in the case of a Hindu, but the Court is not bound, in the case of Europeans and Indians alike, to order a wife to return to her husband if there is reasonable ground for apprehending that a return to that husband will imperil her safety *ter* MOOKERJEE, *J.*—The conduct of a Hindu husband, who brings a low caste woman as his mistress in the house to live with him

HINDU LAW—HUSBAND AND WIFE —*concluded.*

as a member of the family, and expels his wife and son from the family residence, amounts to cruelty within the meaning of the law, which justifies the wife to live separate from her husband and deprives the husband of his right to a decree for restitution of conjugal rights. The husband would not be entitled to succeed even if his conduct did not amount to cruelty but constituted a grave matrimonial offence. DULAR KOER *v.* DWARKA NATH MISSER (1905) . . **I. L. R. 34 Calc. 971**

2.—*Succession—Effect of a wife deserting her husband and becoming a prostitute.*—*Held,* that the fact of a Hindu woman having deserted her husband and become a prostitute did not have the result of entirely severing all connection between herself and her husband. The husband therefore might still be heir to property acquired by the wife since she left him. *Subbaraya Pillai* v. *Ramasami Pillai, I. L. R. 23 Mad. 171,* and *Bisheshur* v. *Mata Gholam, N.-W. P. H. C. 300,* followed. *Musammat Ganga Jati* v. *Ghasita, I. L. R. 1 All. 46,* referred to *Tara Munnee Dossea* v. *Motee Buneanee, 7 Sel. Rep. 273,* and *In the goods of Kaminey Money Bewah, I. L. R. 21 Calc. 697,* dissented from. NARAIN DAS *v.* TIRLOK TIWARI (1906) . . . **I. L. R. 29 All. 4**

HINDU LAW—INHERITANCE.

1.—*Mitakshara—Succession of Bandhus—Daughter's son's son entitled to preference over daughter's daughter's son—Variance between pleading and proof.*—A plaintiff who sues on and fails to prove an alleged gift, may rely on his title by inheritance. Under the Mitakshara law among persons claiming to succeed as Bandhus, preference may be extended so as to prefer, all other considerations being equal, that claimant between whom and the stem there intervenes one female link to that claimant who is separated from the stem by two such links. A daughter's son's son will have preference over a daughter's daughter's son. TIRUMALACHARIAR *v.* ANDAL AMMAL (1907).
I. L. R. 30 Mad. 406

2.—*Murali—Married sisters—Exclusive right claimed by Murali as unmarried daughter to inherit her father's property—Kanya—Maiden—Mitakshara—Vyavaharamayukh—Act XXI of 1850.*—A *Vaghya* (male dedicated to the God Khandoba) had three daughters, one of whom was a *Murali* (female dedicated to the God Khandoba) and two married. After the *Vaghya's* death his *Murali* daughter, who lived by prostitution and had children by promiscuous intercourse, claimed her father's property as heir to the exclusion of her sisters under the rule of Hindu law that an unmarried daughter inherits to her father before his married daughter. The first Court allowed the claim. On appeal by one of the defendants (married daughters), the Judge

HINDU LAW—INHERITANCE—*continued.*

varied the decree by allowing the plaintiff a third share in the property. On second appeal by the plaintiff, the appellate decree was confirmed, there being no appeal or cross-objection by the defendants against that portion of the decree whereby the plaintiff was allowed to share her father's property equally with her married sisters. *Held*, further, that a woman, who in her maiden condition becomes a prostitute, being neither a *kanya* (unmarried) nor a *kulastri* (married), but being at the same time notwithstanding her prostitution a qualified heir as held in *Advyapa* v. *Rudrava*, *4 Bom. 104*, would be entitled to succeed to her father's property only in default of either married or unmarried daughters. TARA *v.* KRISHNA (1907).

I. L. R. 31 Bom. 495

3.—*Mitakshara—Survivorship—Inheritance—Succession (Property Protection) Act (XIX of 1841)—District Judge, jurisdiction of—Irregularity—High Court, revisional powers of.*—A Hindu governed by the Mitakshara Law died leaving him surviving a widow, a daughter by a previous wife, and two brothers. On his death the brothers applied under Act XIX of 1841 to the District Judge for the delivery of possession of the deceased's property on the ground that it formed part of the property in the joint names of their deceased brother and themselves. The District Judge granted their application. The widow contested this claim, and now applied to the High Court to have the order of the District Judge set aside. *Held*, that on the death of a member of a Hindu family governed by Mitakshara, there is only an accession to his property by the other members by survivorship and no succession by inheritance: and that the provisions of Act XIX of 1841 had no application to the present case; and the District Judge should not have taken any action under this Act but have left the parties to seek their remedy by a proper suit for establishment of their title. *Jusoda Koonwar* v. *Gouree Byjnath Pershad*, *6 W. R. Mis. 53*, followed. *Held*, further, that the District Judge acted in the present case (supposing him to have jurisdiction to hear the application) illegally and with material irregularity; and that the petitioner was prejudiced thereby. *Held*, also, that the High Court had full jurisdiction in revision to set aside the order of the District Judge. *Fulchand* v. *Kismesh Koer*, *4 C. W. N. Notes CCXVI*, and *Abdul Rahiman* v. *Kutti Ahmed*, *I. L. R. 10 Mad. 68*, referred to. SATO KOER *v.* GOPAL SAHU (1907) . . **I. L. R. 34 Calc. 929**

4.—*Effect of a wife deserting her husband and becoming a prostitute.*—*Held*, that the fact of a Hindu woman having deserted her husband and become a prostitute did not have the result of entirely severing all connection between herself and her husband. The husband therefore might still be heir to property acquired by the wife since she left him. *Subbaraya Pillai* v. *Ramasami Pillai*, *I. L. R. 23 Mad. 171*, and *Bisheshur* v. *Mata Gholam*, *N.-W. P. H. C. 300*, followed. *Musammat Ganga Jati* v. *Ghasita*, *I. L. R. 1 All. 46*, referred to. *Tara Munnee Dossea* v. *Motee Buneanee*, *7 Sel. Rep. 273*, and *In the goods of Kaminey Money Bewah*, *I. L. R. 21 Calc. 697*, dissented from. NARAIN DAS *v.* TIBLOK TIWARI (1906) . . **I. L. R. 29 All. 4**

HINDU LAW—INHERITANCE—*concluded.*

HINDU LAW—INTEREST.

1.—*Interest—Mitakshara—Debtor wrongfully withholding payment—Demand by creditor—Interest Act (XXXII of 1839)—Indian Contract Act (IX of 1872).*—The plaintiff sued to recover a sum of money with interest from the date of demand from the defendant, who held the money in deposit for her. There was no agreement between the parties to pay interest. The first Court dismissed the claim as to interest; but the lower appellate Court allowed interest on the amount of the deposit from the date of the demand by plaintiff to the date of payment. The parties to the suit were Hindus governed by law of the Mitakshara. *Held*, under special circumstances, interest may be awarded by Courts in India, by way of damages. *Held*, further, that under Hindu Law as it is to be found in the Mitakshara there is annexed to each contract of debt, in which there is no agreement to pay interest, the term or incident that such loss shall be made up by the debtor, if he wrongfully withholds payment after demand: and that this incident was annexed to every such contract at the date when the Interest Act (No. XXXII of 1839) came into force. *Held*, further, that the parties being Hindus governed by the Mitakshara that constituted a special circumstance justifying the award of interest. *Hurropersaud Roy Chowdhry* v. *Shamapersaud Roy Chowdhry*, *L. R. 5 I. A. 81*, applied. SAUNADANAPPA *v.* SHIVBASAWA (1907) . . . . **I. L. R. 31 Bom. 354**

HINDU LAW—JOINT FAMILY.

1.—*Joint Hindu family—Family business—Liability of minor member of family for trade debts—Separate property.*—Where a member of a joint Hindu family carrying on an ancestral family business upon attaining majority separates entirely from the family and the family business, and thereafter acquires separate property, such separate property cannot be made liable for the debts incurred by the family trading firm, but the interest of the separating member in the family property will alone be liable. *Chalamayya* v. *Varadayya*, *I. L. R. 22 Mad. 167*, followed. *Ram Lal Thakursidas* v. *Lakhmichand Muniram*, *1 Bom. H. C. App. li*; *Johurra Bibee* v. *Srigopal Misser*, *I. L. R. 1 Calc. 470*; *Bemola Dossee* v. *Mohun Dossee*, *I. L. R. 5 Calc. 792*, and *Lutchmanan Chetty* v. *Siva Prokasa Modeliar*, *I. L. R. 26 Calc. 849*, referred to. *Samalbhai Nathubhai* v. *Someshwa*, *I. L. R. 5 Bom. 38*, and *In the matter of Haroon Mahomed*, *I. L. R. 14 Bom. 189*, distinguished. BISHAMBHAR NATH *v.* FATEH LAL (1906).

I. L. R. 29 All. 176

HINDU LAW—JOINT FAMILY—*continued.*

2.—*Joint family—Family business—Suit to recover a debt due to the firm—Parties to such suit.*—*Held*, that the managing members of a joint Hindu family carrying on a joint family business are not entitled to maintain a suit in their own names against debtors of the family without joining with them in the suit either as plaintiffs or defendants all the other members of the family. *K. P. Kanna Pisharody* v. *V. M. Narayanan Somayajipad, I. L. R. 3 Mad. 234; Balkrishna Moreshwar Kunte* v. *The Municipality of Mahad, I. L. R. 10 Bom. 32; Ramsebuk* v. *Ramlal Koondoo, I. L. R. 6 Calc. 815; Kalidas Kevaldas* v. *Nathu Bhagvan, I. L. R. 7 Bom. 217; Imam-ud-din* v. *Liladhar, I. L. R. 14 All. 524; Alagappa Chetti* v. *Vellian Chetti, I. L. R. 18 Mad. 33*, and *Angamuthu Pillai* v. *Kolandavelu Pillai, I. L. R. 23 Mad. 190*, referred to. *Pateshri Partap Narain Singh* v. *Rudra Narain Singh, I. L. R. 26 All. 528*, distinguished. SHAMRATHI SINGH *v.* KISHAN PRASAD (1907).

I. L. R. 29 All. 311

3.—*Separate estate of co-parcener—Proof—Onus—Nucleus of ancestral property—Adverse possession.*—When the question was whether a certain property was the joint property of a Hindu family or the separate estate of a member and it was proved that the family lived joint in one house and that there was a nucleus of joint property of substantial value, the onus was on the party setting up a case of separate estate. *Held*, on the evidence, that the property was joint. Whilst on the one hand there were certain instruments by which the grantors purported to deal with it as if it were separate estate, there were, on the other hand, a series of family books and various contracts and transactions inconsistent with anything but joint property. But over and above this, the tenor of family life proved the use of the property to have been the same after as before the execution of those instruments. A case of adverse possession by a co parcener cannot be established by mere paper assertions not brought home to the knowledge of the other co-parceners, when there has been no actual exclusion of the latter from use and enjoyment for the period of limitation. ANANDRAO GUNPUTRAO *v.* VASANTRAO MADHAWRAO (1907).

11 C. W. N. 478

4.—*Joint family—Presumption and onus of proof as to whether property is ancestral or self-acquired—Nucleus of ancestral property—Property purchased while living jointly—Will disposing of ancestral property, invalidity of.*—A Hindu, the head of a joint family governed by the Mitakshara law, left property which on his death in 1849 passed to his three sons, who remained joint until 1866 when they came to a partition amongst themselves. There was nothing to show that any of them then had any separate property. At that time one of them had two sons and another son was born to him after the partition. The father and these three sons lived together jointly and acquired other property. The father died in 1894 leaving a will by which he gave a small allowance and a residence to each of his younger sons, and left all the rest of his property to his eldest son describing it as his self-acquired property. In a suit brought by the two younger sons against their brother to set aside the will, the validity of which depended on the question whether the property was ancestral or self-acquired, the Judicial Committee (reversing the decision of the High Court) held that the share taken on partition by the father of the plaintiffs and defendant was ancestral property in which from their birth his sons acquired an interest; that there thus being a nucleus of ancestral property the onus was on the defendant to show that the property in suit was self-acquired and not purchased with ancestral funds; that such onus had not been discharged; that on the contrary the evidence showed that there was a common stock of the whole family into which each member voluntarily threw what he might otherwise have claimed as self-acquired, and that the property purchased by, or with the assistance of, the joint funds was joint property, and did not belong to any particular member of the family. There was therefore no self-acquired property, and the will was consequently inoperative to defeat the claim of the younger sons to a share in the family estate. LAL BAHADUR *v.* KANHAIYA LAL (1907).

I. L. R. 29 All. 244; L. R. 34 I. A. 65

5.—*Joint family—Liability of sons in respect of a mortgage executed by the father—Exemption of son's interest—Subsequent suit against sons for share of debt payable by them Limitation Act (XV of 1877) Sch. II, Arts. 147, 132, 120.*—Certain joint ancestral property was mortgaged by the head of the family first in 1882 and again in 1893. Subsequently the second mortgagee redeemed the first mortgage. The second mortgagee then sued to recover the amount due on both mortgages by sale of the mortgaged property, and obtained a decree in March 1895 and an order absolute for sale on the 25th of October 1897. To this suit the sons and grandsons of the mortgagor were not made parties. The sons and grandsons of the mortgagor sued for and obtained a decree exempting their interest in the mortgaged property from the operation of the mortgagee's decree. The mortgagee then sued the sons and grandsons to recover from them a proportionate part of the amounts due on his mortgages. This suit was instituted on the 6th of April 1904. *Held*, that the mortgagee's suit against the sons and grandsons of the mortgagor was maintainable and that it was not barred by limitation, the rule applicable being either Art. 147 or Art. 132 of the second Schedule to the Indian Limitation Act, 1877. *Badri Prasad* v. *Madan Lal, I. L. R. 15 All. 75; Maharaj Singh* v. *Balwant Singh, I. L. R. 28 All. 508*, and *Muhammad Askari* v. *Radhe Ram Singh, I. L. R. 22 All. 307*, distinguished. *Dharam Singh* v. *Angan Lal, I. L. R. 21 All. 301*, and *Ariabudra* v. *Dora Sami, I. L. R. 11 Mad. 413*, followed. RAM SINGH *v.* SOBHA RAM (1907).

I. L. R. 29 All. 544

6.—*Mitakshara—Survivorship—Execution of decree—Decree against father—Execution against*

HINDU LAW—JOINT FAMILY—*continued.*

representative—Legal representative—Mitakshara son, liability of, to be brought upon the record—Civil Procedure Code (Act XIV of 1882), ss. 234, 244.—Where a decree for money passed against a member of a joint Hindu family governed by the Mitakshara was sought to be executed after his death against his son and heir, who took ancestral property by survivorship, as his legal representative: *Held* by MACLEAN, *C.J.*, BRETT and MITRA, *JJ.* (HARINGTON and GEIDT, *JJ.* dissenting), that on a construction of ss. 234 and 244 of the Code of Civil Procedure the liability of an ancestral property or of a share of it for the debt covered by the decree might be determined in the execution proceedings, if the legal representative had been properly brought on the record under s. 234. *Held*, also, by MACLEAN, *C.J.* (BRETT, *J.* concurring), that the son being the legal representative of the deceased judgment-debtor is, *primâ facie*, unless he can show that the judgment-debtor left no self-acquired property, liable to be brought upon the record under s. 234 of the Code. *Held* by HARINGTON and MITRA, *JJ*, that the son was the legal representative and might, as such, be brought upon the record. AMAR CHANDRA KUNDU *v.* SEBAK CHAND CHOWDHURY (1907).

I. L. R. 34 Calc. 642

7.—*Joint family—Redemption of mortgage—Suit by father dismissed—Subsequent suit by sons.*—A joint Hindu family, consisting of father and sons, were co-mortgagors by way of usufructuary mortgage of joint family property. The father sued for redemption, but was unsuccessful. *Held* on suit by the sons claiming to redeem the whole mortgage, that the sons were not precluded by reason of the result of their father's suit from suing to redeem, but they could not obtain redemption of more than their own shares. SUNDAR LAL *v.* CHHITAR MAL (1906).

I. L. R. 29 All. 215

8.—*Joint family—Ancestral family business—Liability of member of the family after severance of his connection with the family business.*—A member of a joint Hindu family carrying on an ancestral family business upon attaining the age of majority completely severed his connection with the family business, nor was it shown that he ever ratified any of the transactions entered into by the family firm. *Held*, that such member could, on the failure of the family business only, be made liable for its debts to the extent of his interest in the joint family property. He could not be held personally liable. BISHAMBHAR NATH *v.* SHEO NARAIN (1906).

I. L. R. 29 All. 166

9.—*Self-acquired property—Devise of self-acquired property to sons—Nature of sons' interest.—Semble*: that property which is the self-acquired property of a Hindu who has sons and grandsons and is devised by will to one of the owner's sons remains after devolution self-acquired property and does not become the joint property of the devisee and his sons. *Jugmohandas Mangaldas* v. *Sir Mangaldas Nathubhoy, I. L. R. 10 Bom. 528*, followed. *Tara Chand* v. *Reeb Ram, 3 Mad. H. C. 50*, and

HINDU LAW—JOINT FAMILY—*concluded.*

Muddun Gopal Thakoor v. *Ram Buksh Pandey, 6 W. R. 71*, dissented from. *Semble*, also, that where the sons of a Hindu father, apparently members with their father of a joint Hindu family, took under their father's will property acquired by him under the will of his father, devised to them separately by name; but continued to live in the manner of a joint Hindu family and treated at all events the immoveable property for a series of years in all respects as if it were joint ancestral property, the property so devised remained separate property according to Hindu law. *Appovier* v. *Rama Subba Aiyan, 11 Moo. I. A. 75*, and *Balkishen Das* v. *Ram Narain Sahu, L. R. 30 I. A. 139*, referred to. PARSOTAM RAO TANTIA *v.* JANKI BAI (1907) . . . . **I. L. R. 29 All. 354**

10.—*Mitakshara—Joint family—Ancestral property—Property inherited from maternal grandfather.—Held*, that a son in a joint Hindu family does not acquire by birth an interest jointly with his father in property which the latter inherits from his maternal grandfather. *Vythinatha Ayyar* v. *Yeggia Narayana Ayyar, I. L. R. 27 Mad. 382*, dissented from. *Sudarsanam Maistri* v. *Narsimhulu Maistri, I. L. R. 25 Mad. 149*, discussed. *Venkayyamma Garu* v. *Venkataramanayyamma Bahadur Garu, I. L. R. 25 Mad. 678; Karuppai Nachiar* v. *Shankaranarayanan Chetty, I. L. R. 27 Mad. 300*, and *Chatturbhooj Meghji* v. *Dharamsi Naranji, I. L. R. 9 Bom. 438*, referred to. JAMNA PRASAD *v.* RAM PARTAP (1907).

I. L. R. 29 All. 667

11.—*Joint family—Minor—Right of minor member of a joint family to sue for partition.—Held*, that a minor member of a joint Hindu family may institute a suit for and obtain partition of his share in the joint family property if there exist circumstances such as, in the interest of the minor, render it advisable that his share should be set aside and secured for him. BHOLA NATH *v.* GHASI RAM (1907) . . . . **I. L. R. 29 All. 373**

12.—*Negotiable Instruments Act (XXVI of 1881), ss. 4, 26, 27, 28—Joint Hindu family, liability of—Promissory note executed by karta—Family necessity—Liability of other members—Agency.*—Where the *karta* of a joint undivided Hindu family borrows money on promissory notes for the purpose of a joint family business or to meet a joint family necessity, the creditor can recover the money from all the members of the joint family, although they were not all parties to the notes. Ss. 26, 27, 28 of the Negotiable Instruments Act refer to cases of ordinary agency. *Krishna Ayyar* v. *Krishnasami Ayyar, I. L. R. 23 Mad. 597*; *Nagendra Chandra Dey* v. *Amar Chandra Kundu, 7 C. W. N. 725*, referred to. BAISNAB CHANDRA DE *v.* RAMDHON DHOR (1906). **11 C. W. N. 139**

HINDU LAW—MAINTENANCE.

1.—*Maintenance, decree for—When such decree can be executed after death of person against whom*

HINDU LAW—MAINTENANCE—*concluded.*

it is passed against other members of joint family. —A decree for maintenance obtained against a member of an undivided family, can, after his death, be executed against joint property in the hands of other members, if the member against whom the decree was passed, was sued as representing the family or if the decree created a charge on the joint family property. *Muttia* v. *Virammal, I. L. R. 10 Mad. 283*, referred to. SUBBANNA BHATTA *v.* SUBBANNA (1907) . . . . I. L. R. 30 Mad. 324

HINDU LAW—PARTITION.

1.—*Joint family—Partition—Partition deed giving certain advantages to minor member of family—Right of person so benefited to sue on deed —Act No. I of 1877 (Specific Relief Act), s. 23 (c).*—By a deed of partition executed by the adult members of a joint Hindu family it was agreed that a certain minor member of the family, represented in the execution of the deed by his father, should receive a certain share in a particular village "by right of primogeniture," and the agreement further recited that the member in question had been put into possession of the share allotted to him. It was further agreed that, inasmuch as the property thus dealt with was subject to two mortgages, the other members of the family would be responsible for the payment of the mortgage debts and would indemnify the recipient of the mortgaged property in case of proceedings being taken against such property for satisfaction of the mortgage debts. *Held*, on suit by the minor (after attaining majority) to compel reimbursement by the other members of the family, that the partition deed was enforceable in favour of the plaintiff, just as much as, if just and equitable, it would have been binding upon him, and that the plaintiff was entitled to sue for any benefit which the deed purported to secure to him. *Annamali Chetti* v. *Murugasa Chetty, L. R. 30 I. A. 220*, and *Gandy* v. *Gandy, L. R. 30 Ch. D. 57*, referred to. *Held*, also, on a construction of the partition deed, that the plaintiff was also entitled to sue having regard to the terms of s. 23 (*c*) of the Specific Relief Act, 1877. AWADH SARJU PRASAD SINGH *v.* SITA RAM SINGH (1906) . . I. L. R. 29 All. 37

2.—*Partition—Effect of partition of family property between two branches of the family without specification of individual shares of one branch.*—By an award the property of a joint Hindu family consisting of an uncle and two nephews was partitioned, one share being allotted to the uncle and one to the nephews, but nothing was said as to the shares to be taken by the nephews individually, nor did they express any desire to separate. *Held*, that the presumption was that the shares of the nephews still continued to be joint property so far as they were concerned. *Balkishan Das* v. *Ram Narain Sahu, I. L. R. 30 Calc. 788*, distinguished. DURGA DEI *v.* BALMAKUND (1906).

I. L. R. 29 All. 93

3.—*Right of representation—Divided son as nearest sapinda does not exclude divided grandson or great-grandson.*—Partition does not annul the filial relation nor the right of succession incidental to such relation. The right of divided sons, grandsons and great-grandsons of the last male owner to succeed to his divided property, is the same as in the case of undivided family property. The right of representation exists equally in the former as in the latter case, and the divided son will not, on the principle of the exclusion of remoter by nearer sapindas, exclude the divided grandson in the succession to divided property of the ancestor. *Ramappa Naicken* v. *Sithammal, I. L. R. 2 Mad. 184*, referred to. *Muthuvaduganatha Tevar* v. *Periasami, I. L. R. 16 Mad. 15*, referred to. MARUDAYI *v.* DORAISAMI KARAMBIAN (1907).

I. L. R. 30 Mad. 348

4.—*Expenses for ceremonies of brother's sons—Share of stepmother—Value of stridhan to be deducted from share—Expenses for ceremonies of grandchildren.*—In a suit for partition brought by a Hindu against his father and brothers, the brothers are entitled to have set apart from the family property a sum sufficient to defray the expenses of their prospective thread, betrothal and marriage ceremonies, such sum to be calculated according to the extent of the family property. A father's wife is on such partition entitled to a share equal to that of a son but from her share must be deducted the value of any *stridhan* received by her as a gift from her father-in-law or husband. The children of a brother on such partition are not entitled to any sum for the performances of their prospective thread, betrothal or marriage ceremonies. JAIRAM *v.* NATHU (1906).

I. L. R. 31 Bom. 54

5.—*Mother's share on partition—Hindu law—Dayabhaga school—Life interest—Application for execution of decree by her executor—Refusal—Appeal—Civil Procedure Code (Act XIV of 1882), ss. 232, 244.*—Under the Hindu law, according to the Bengal school, when upon partition a share is given to the mother she gets it simply in lieu of, or as provision for her maintenance and not because she is a coparcener in the estate, and the share reverts upon her death to her sons out of whose portion it was taken. *Kedar Nath Coondoo* v. *Hemangini Dassi, I. L. R. 13 Calc. 336, 340; Sorolah Dossee* v. *Bhooban Mohan Neogi, I. L. R. 15 Calc. 292*, and *Hemangini Dasi* v. *Kedar Nath Kundu, I. L. R. 16 Calc. 758*, followed. HRIDOY KANT BHATTACHERJEE *v.* BEHARI LAL MOOKERJEE (1908) . . 11 C. W. N. 239

6.—*Partition amongst sons—Mother's share reverts on death to sons.*—When the Hindu law prescribes a share being allotted to a woman upon a partition after her husband's death, it is a share given to her simply in lieu of maintenance and such share reverts, according to the Bengal school, upon her death to those heirs of her husband out of whose portion the share was taken. TRIPURA SUNDARI DEBI *v.* DAKSHINA MOHUN ROY (1906).

11 C. W. N. 698

7.—*Joint Hindu family—Right of minor member of a joint family to sue for partition.*—*Held*,

HINDU LAW—PARTITION—*concluded.*

that a minor member of a joint Hindu family may institute a suit for and obtain partition of his share in the joint family property if there exist circumstances such as in the interest of the minor render it advisable that his share should be set aside and secured for him. BHOLA NATH *v.* GHASI RAM (1907) . . . . I. L. R. 29 All. 373

8.—*Right to partition—Joint family—Mitakshara law—Gift to daughter out of joint property—Gift out of income.*—*Held*, that partition of the property which was asked for in case the plaintiff had no exclusive right to it was rightly refused by the Courts in India. BACHOO *v.* MANKOREBAI (1907) . . . I. L. R. 31 Bom. 373; L. R. 34 I. A. 107

HINDU LAW—REVERSIONERS.

1.—*Agreement to divide reversion when it should fall in, creates no vested right, but only right to claim specific performance.*—Three brothers, *S*, *R* and *K* and their father made an arrangement which amounted to a division of the family properties. The father and *R* and *K* continued, however, to live together. The father died first and then *R*, leaving him surviving *A*, his widow, and *B*, his daughter. *A* and *B* did not claim *R*'s share, but were content with maintenance. There was, however, no surrender by *A* of her rights. *S* and *K* entered into an agreement between themselves to the effect that *K* should enjoy *R*'s share and maintain *A* and *B*, *S* being given a small piece of land at once, and that after *A*'s death *S* was to take half of *R*'s share. *B* died unmarried in *A*'s life-time and *S* predeceased *A* who died in 1891. In a suit brought in 1901 by the son of *S* to recover one-half share of *R*'s property: *Held* (WALLIS, *J.*, dissenting), that *K* and *S* were expectant reversionary heirs and the agreement between them was in effect to divide the reversion when it should fall in. The right of *K* as such presumptive reversionary heir was incapable of transfer on the principle embodied in s. 6 of the Transfer of Property Act, and the agreement did not operate to vest any property in *S* as from the date of agreement and the suit was not therefore maintainable. *Per* BODDAM, *J.*—The agreement gave only a right to claim specific performance thereof when the reversion should fall in, which right became barred as it was not enforced within the statutory period after the death of the widow. *Per* WALLIS, *J.*—The widow not having claimed her husband's share and having contented herself with maintenance, *S* and *K* were not in the position of expectant heirs, although the widow by asserting her right might have reduced them to that position. Under the circumstances, the agreement was something more than a mere contract on the part of *K* to convey to *S* a half share on the widow's death. The effect of the agreement was to give *S* a vested interest in a half share in the lands to take effect in possession on the widow's death and the suit was therefore maintainable. PINDIPROLU SOORAPARAJU *v.* PINDIPROLU VEERABHADRUDU (1907) . . . . I. L. R. 30 Mad. 486

HINDU LAW—STRIDHAN.

1.—*Stridhan—Succession—Property inherited by daughter from her father—Devolution.*—Under the Mitakshara law, as interpreted in this Presidency, the daughter takes an absolute interest in property inherited from her father and, on her death, it devolves on her daughter in preference to her son. GULAPPA *v.* TAYAWA (1907) . I. L. R. 31 Bom. 453

2.—*Partition—Stridhan—Share of stepmother—Value of stridhan to be deducted from share—Expenses for ceremonies of grandchildren.*—In a suit for partition brought by a Hindu against his father and brothers, the brothers are entitled to have set apart from the family property a sum sufficient to defray the expenses for their prospective thread, betrothal and marriage ceremonies, such sum to be calculated according to the extent of the family property. A father's wife is on such partition entitled to a share equal to that of a son, but from her share must be deducted the value of any *stridhan* received by her as a gift from her father-in-law or husband. JAIRAM *v.* NATHU (1906).

I. L. R. 31 Bom. 54

HINDU LAW—SUCCESSION.

1.—*Grihast Goshains—Succession—Custom—Adoption of chela by widow of deceased Goshain.*—The plaintiff set up a custom as prevalent amongst the Grihast Goshains of Hardwar and other places adjacent in the United Provinces whereby the widow of a deceased Goshain was entitled with the concurrence of the elders of the sect to adopt a chela and successor to her deceased husband. *Held*, on the evidence, that such custom was not established. *Ramalakshmi Ammal* v. *Sivanantha Perumal Sethurayar, 14 Moo. I. A. 570; Khuggender Narain Chowdry* v. *Sharupgir Oghorenath, I. L. R. 4 Calc. 543*, and *Govind Doss* v. *Ramsahoy Jemadar, 1 Fulton 217*, referred to. *Semble*: that the sect of Grihast Goshains living mostly in these provinces at Hardwar, Dehra Dun and other adjacent places are subject generally to the ordinary rules of Hindu law. *Collector of Dacca* v. *Jagat Chunder Goswami, I. L. R. 28 Calc. 608*, referred to. CHHAJJU GIR *v.* DIWAN (1906) . . I. L. R. 29 All. 109

2.—*Right of representation—Divided son as nearest sapinda does not exclude divided grandson or great-grandson.*—Partition does not annul the filial relation nor the right of succession incidental to such relation. The right of divided sons, grandsons and great-grandsons of the last male owner to succeed to his divided property, is the same as in the case of undivided family property. The right of representation exists equally in the former as in the latter case, and the divided son will not, on the principle of the exclusion of remoter by nearer sapindas, exclude the divided grandson in the succession to divided property of the ancestor. *Ramappa Naicken* v. *Sithammal, I. L. R. 2 Mad. 184*, referred to. *Muthuvaduganatha Tevar* v. *Periasami, I. L. R. 16 Mad. 15*, referred to. MARUDAYI *v.* DORAISAMI KARAMBIAN (1907).

I. L. R. 30 Mad. 348

HINDU LAW—WIDOW.

1.—*Hindu widow—Effect of relinquishment of the estate by a widow in favour of the present reversioners.*—A Hindu widow in possession of a widow's estate in property of her deceased husband, a separated and childless Hindu, relinquished possession thereof to two persons who at the time were the next reversioners, they agreeing to pay her a maintenance allowance; but it did not appear that she intended to make them, if she could, full owners of the property, although certain incorrect recitals in the agreement entered into by the widow, when she gave possession of the property, might have lent colour to this suggestion. Both the persons thus put into possession predeceased the widow. *Held*, that the nearest reversionary heir to the widow's late husband was entitled to succeed on the death of the widow *Quære*: whether in these provinces a Hindu widow can accelerate the estate of the heir by conveying absolutely and destroying her life estate? *Behari Lal* v. *Madho Lal Ahir Gayawal, I. L. R. 19 Calc. 236*, and *Ramphal Rai* v. *Tula Kuari, I. L. R. 6 All. 116*, referred to. RAJ KISHORE *v.* DURGA CHARAN LAL (1906). **I. L. R. 29 All. 71**

2.—*Mitakshara—Mayukha — Succession—Co-widow's interest in the property of their deceased husband—Right of assigning her share—Partition—Alienation of her share—Valid during her life-time—Survivorship.*—It is the right of each of the co-widows to enjoy her deceased husband's property by partition *inter se*, both under the Mitakshara and the Mayukha. She can, therefore, assign her share to anyone she chooses; and if she has already obtained her share by partition, she can alienate that share. But in either case the assignment or alienation cannot take effect or have validity beyond her life-time. It is good as long as she lives: and, on her death, her interest in the property ceases and the share goes to the surviving co-widow or co-widows as the case may be. HABI *v.* VITAI (1907). **I. L. R. 31 Bom. 560**

3.—*Reversioner bound by decree obtained against widow without fraud or collusion, though without contest—Alienation by one of several widows not invalid ipso facto.*—A decree on a claim binding on the inheritance though obtained without contest against the widow in possession is binding on the reversionary heir in the absence of fraud or collusion. The widow as representing the estate is not bound to raise any defence when she is satisfied that the debt is really due. An alienation by one of two co-widows is not *ipso facto* invalid with reference to the interest of the other co-widow or of persons interested in the reversion. SUBBAMMAL *v.* AVUDAIYAMMAL (1906). **I. L. R. 30 Mad. 3**

4.—*Reversioner—Suit—Limitation Act (XV of 1877), Sch. II, Arts. 91, 141—Immoveable property—Lease by Hindu widow for a term extending beyond her life—Reversioner's right of election to affirm it or treat it as a nullity*—A suit by a reversioner on the death of a Hindu widow to recover immoveable property of her husband, of which she was in possession for a widow's estate as his heir, and of which she had granted a lease for a term extending beyond her own life, is governed by the 12 years' period of limitation provided by Art. 141 of Sch. II of the Limitation Act, and not by the three years' period prescribed by Art, 91. A Hindu widow is the owner of her husband's property subject to certain restrictions on alienation, and subject to its devolving upon her husband's heirs upon her death. Her alienation is not absolutely void, but it is *primâ facie* voidable at the election of the reversionary heir, who may affirm it or treat it as a nullity without the intervention of any Court, there being nothing to set aside or cancel as a condition precedent to his right of action. The institution of a suit for possession shows his election to treat the alienation as a nullity; and in such a suit it is therefore unnecessary for him to ask for a declaration that it is inoperative. BIJOY GOPAL MUKERJI *v.* KRISHNA MAHISHI DEBI (1907).

I. L. R. 34 Calc. 329; L. R. 34 I. A. 87

5.—*Widow—Alienation—Suit by reversioner to set aside the alienation—Limitation—Limitation Act (XV of 1877), Sch. II, Art. 91.*—The plaintiff sued in 1904, as a reversioner, to recover possession of property from the defendant to whom it had been given by way of gift in 1894 by the widow of a preceding owner. It was found by both the lower Courts that the alienation was not justified by any necessity recognised by Hindu law. The defendant pleaded that the suit was barred by limitation. *Held*, that it was not open to the defendant to rely on Art. 91 of the Limitation Act (XV of 1877) as a bar to the suit. *Harihar Ojha* v. *Dasarathi Misra, I. L. R. 33 Calc. 257*, followed. RAKHMABAI *v.* KESHAV RAGHUNATH (1906).

I. L. R. 31 Bom. 1

6.—*Service inam—Alienation by widow.*—A Hindu widow cannot alienate beyond her own life-time service inam enfranchised in her name under Madras Act IV of 1866. PINGALA LAKSHMIPATHI *v.* BOMMIREDDIPALLI CHALAMAYYA (1907).

I. L. R. 30 Mad. 434

HINDU LAW—WILL.

1.—*Will—Direction to accumulate, when valid—Charitable bequest.*—In Hindu Law, a direction to accumulate is not *per se* illegal, and such a direction should be given effect to, if it is not void as against public policy, nor given for an illegal object, nor otherwise inconsistent with Hindu law. *Amrito Lall Dutt* v. *Surnomoni Dasi, I. L. R. 25 Calc. 662*, followed A direction to spend income in feeding poor, indigent Hindus is a valid charitable bequest under Hindu law. *Dwarkanath Bysack* v. *Burroda Persaud Bysack, I. L. R. 4 Calc. 443*, referred to. RAJENDRA LALL AGARWALLA *v.* RAJ COOMARI DABI (1906). . **I. L. R. 34 Calc. 5**

2.—*Revocation—Will of self-acquired property of Hindu testator not revoked by birth of posthumous son—Hindu Wills Act (XXI of 1870), ss. 2 and 3—Indian Succession Act (X of 1865), ss. 56 and 57—Under ss. 2 and 3 of the Hindu Wills Act and s. 57 of the Indian Succession Act, a will to*

HINDU LAW—WILL—*continued.*

which the Hindu Wills Act applies can be revoked only in the modes provided in s. 57 of the Succession Act.—The incorporation of s. 57 of the Indian Succession Act in the Hindu Wills Act and the enactment of the provision of s. 3 of the latter Act show clearly that the Legislature intended that the rule of revocation by a change of circumstances should not be applied to the wills of Hindus. S. 57 of the Succession Act is exhaustive, as it provides that a will shall not be revoked except in certain ways. Wills of Hindus to which the Hindu Wills Act applies, can be revoked only in one of the modes, excepting marriage, provided in s. 57 of the Succession Act. A will by a Hindu of self-acquired property to which the provisions of the Hindu Wills Act apply, is not therefore revoked by the birth of a posthumous son. The same rule must be applied in the case of wills not governed by the Hindu Wills Act, as to apply a different rule to them will be inconvenient as well as illogical. SUBBA REDDI *v.* DORAISAMI BATHEN (1907)

I. L. R. 30 Mad. 369

3.—*Will—Endowment—Shebaitship—Validity of bequest—Intention of foundress—Usage—Custom.*—Where the intention of the foundress of a private religious endowment was that all her lineal descendants should hold the *debutter* property and jointly perform the worship of the idol, and the testator (one of her descendants) bequeathed the *pala* or turn of worship to his wife and on her demise to one of his two nephews, grandnephew and their lineal descendants to the exclusion of the other nephew: *Held*, that the bequest was not in accordance with the intention of the foundress, nor the Hindu Law; and that there was no established usage or practice in the family to justify it. The office of *shebait* is not divisible except by custom. RAJESHWAR MULLICK *v.* GOPESHWAR MULLICK (1907).

I. L. R. 34 Calc. 828

4.—*Charitable bequest—Bequest to 'Dharma' void.*—One *G* by his last will and testament bequeathed certain properties to his daughter in the following words:—"They (the executors) shall deliver all other properties to her on her attaining proper age (*i.e.*,) 18 years, my daughter shall use and enjoy the properties for her life. These properties shall, after her, be taken by her issue. In case my daughter may not perchance have any such issue, she should dispose of as she pleases all the properties she may have. *In case she, per chance, being short-lived die before so attaining her age, the executors shall utilise those properties for Dharmam.*" The daughter died issueless before attaining majority. The plaintiff, one of the executors, and the next heir of the deceased *G*, brought this suit for declaring the bequest to 'Dharma' void and to declare the right of plaintiff to succeed to the properties bequeathed to the daughter. MR JUSTICE BODDAM held the bequest to 'Dharmam' void and decreed the plaintiff's claim. On appeal, *Held*, *Per* CHIEF JUSTICE.—The bequest to 'Dharmam' is void. *Runchordas Vandrawondas* v. *Parvatibhai*, *L. R. 26 I. A. 71*, followed. *Per* SUBRAHMANIA AYYAR, *J.*—The word 'Dharmam' when used in connection with gifts of property by a Hindu has a perfectly well-settled meaning and connotes *ishta* and *poorta* donations. The word is a compendious term referring to certain classes of pious gifts, and is not a mere vague and uncertain expression. The testator must be presumed to have used the word with reference to the definite objects inculcated by shastraic precepts and well known to the people and therefore the gift to 'Dharmam' is not void for indefiniteness. PARTHASARATHY PILLAI *v.* THIRUVENGADA PILLAI (1907).

I. L. R. 30 Mad. 340

5.—*Mitakshara—Will, Construction of—Property devised to wife as "malik"—Estate taken by widow.*—Where a Hindu governed by the Mitakshara law devised immoveable property to his wife stating that she would be the "malik" of the property after his death, it was *held* that the word "malik" imported an absolute proprietary interest, and that, in the absence of any indication of a contrary intention on the part of the testator, the widow took an absolute, and not merely a life estate in the properly so devised. *Surajmani* v. *Rabi Nath*, *I. L. R. 25 All. 351*, dissented from. *Jamna Das* v. *Ramautar Pande*, *I. L. R. 27 All. 364*, distinguished. *Lala Ramjewan Lal* v. *Dal Koer*, *I. L. R. 24 Calc. 406*, *Lalit Mohan Singh Roy* v. *Chukkun Lal Roy*, *I. L. R. 24 Calc. 834*, and *Raj Narain Bhadury* v. *Asutosh Chuckerbutty*, *I. L. R. 27 Calc. 44* and *649*, followed. PADAM LAL *v.* TEK SINGH (1906) . . **I. L. R. 29 All. 217**

6.—*Title acquired under will of deceased wife—Property devised subject to mortgages—Compromise of claims of reversioners to estate of wife's father—Nature of devisee's title not thereby altered.*—One Munni Lal died leaving certain property, of which his widow Jasoda Kunwar took possession. Jasoda Kunwar died leaving the property by her will to her daughter Anpurna, who also died after making a will leaving the property in question to her husband Ram Shankar Lal. Both the wills provided that the devisee was to pay off certain incumbrances existing on the property. After the death of Anpurna the property was claimed by the reversionary heirs to Munni Lal's estate, but this claim was settled by a compromise by which Ram Shankar Lal gave certain land to the claimants in consideration of their entirely withdrawing their claim to the rest of the property. *Held*, that the compromise did not convey to Ram Shankar Lal the title of the reversioners; but that he took under the will of his wife and could not therefore raise any defence to a suit for sale brought by the mortgagees which Jasoda Kunwar or Anpurna could not themselves have raised. *Rani Mew Kunwar* v. *Rani Hulas Kunwar*, *L. R. 11 I. A. 157*; *Gobinda Krishna Narain* v. *Abdul Qayyum*, *I. L. R. 25 All. 546*, and *Bache Kunwar* v. *Dharamdas*, *I. L. R. 28 All. 352*, referred to. RAM SHANKAR LAL *v.* GANESH PRASAD (1907).

I. L. R. 29 All. 451

HINDU LAW—WILL—*concluded.*

HINDU WIDOW.

See HINDU LAW—ALIENATION—WIDOW.

I. L. R. 29 All. 331

HINDU WIDOW—*concluded.*

See LIMITATION ACT (XV OF 1877), SCH. II, ART. 125 . **I. L. R. 29 All. 239**

HINDU WIDOWS' RE-MARRIAGE ACT (XV OF 1856).

——s. 2—

—Hindu widow—Re-marriage permitted by rules of caste—Widow not deprived of property of her first husband.—Where the rules of her caste recognise the right of a Hindu widow to remarry, a re-marriage has not the result of divesting her of the property of her first husband. *Har Saran Das* v. *Nandi, I. L. R. 11 All. 330*; *Dharam Das* v. *Nand Lal, Weekly Notes, 1889, p. 78*, and *Ranjit* v. *Radha Rani, I. L. R. 20 All. 476*, referred to. *G* died, leaving a widow *T* and a mother *K*. *T*, being permitted to do so by the custom of the caste, married again. *T* transferred her interest in her first husband's property to *D* and *S*. *K* purported to sell the same property to *L*, who mortgaged it to *K P* and *N R*. *Held*, on suit by *D* and *S* for recovery of the property transferred, that the plaintiffs were not bound to reimburse the defendants (*K*, *L* and *L*'s mortgagees) in respect of any debts of *G* which they might have paid. KHUDDO v. DURGA PRASAD (1906) . . **I. L. R. 29 All. 122**

HINDU WILLS ACT (XXI OF 1870).

——ss. 2, 3—

See HINDU LAW—WILL.
I. L. R. 20 Mad. 369

"HOLDING OVER," PRESUMPTION OF.

See EJECTMENT, SUIT FOR.
I. L. R. 34 Calc. 396

HUSBAND AND WIFE.

See HINDU LAW.

See RESTITUTION OF CONJUGAL RIGHTS.
I. L. R. 34 Calc. 971

1.—*Suit for restitution of conjugal right—Suit by an excommunicated member of a caste—Mussalman Kharwa community of Broach—Custom.*—The plaintiff, an excommunicated member of the Mussalman Kharwa community of Broach, sued his wife (defendant No. 1) for restitution of conjugal rights. At the time of their marriage, the parties were members of the caste; but subsequently the plaintiff was excommunicated from his caste. The defendant contended that she should not be compelled by the Court to go and live with him as his wife before the plaintiff was re-admitted into the caste: *Held*, upholding the contention, that at the time of marriage she was not only a Mahomedan by faith but also a member of the Kharwa community: occupying that status, she married the plaintiff. It was, therefore,

HUSBAND AND WIFE—*concluded.*

of the essence of the marriage contract that they married because they were members of that particular community and they must be regarded as having entered into the marital relation on the basis of that status. BAI JINA v. KHARWA JINA (1907).
I. L. R. 31 Bom. 366

2.—*Implied authority of wife to pledge husband's credit when rebutted.*—The presumption of implied authority on the part of the wife to pledge her husband's credit for necessaries may be rebutted by proof of circumstances inconsistent with the existence of such authority. MAHOMED SULTAN SAHIB v. HORACE ROBINSON (1907).
I. L. R. 30 Mad. 543

I

IDOL.

——public worship of—

See PROCESSIONS.
I. L. R. 30 Mad. 185; L. R. 34 I. A. 93

IMMOVEABLE PROPERTY.

——transfer of—

See LIS PENDENS. . **11 C. W. N. 828**

IMPARTIBLE ESTATE.

—Succession Certificate Act (VII of 1889)—Successor to impartible zamindari not entitled to recover debts due to his predecessor without a certificate under the Act.—The successor to an impartible estate is not a co-owner with his predecessor in the moneys due to the latter before his death. He derives his title to such debts only at the death of his predecessor, as part of such predecessor's effects and cannot recover them without obtaining a certificate under Act VII of 1889. The rule of succession in impartible estates is based on a theoretical co-parcenary and not on any actual unity of interest between the predecessor and his successor, and this theoretical community of interest can be applied only for the purpose of determining the succession and for no other purpose whatsoever. *The Pittapore Case, I. L. R. 22 Mad. 397*, referred to. Observations of SANKARAN NAIR, *J.*, *in Nachiappa Chettiar* v. *Chinnayasami Naicker, I. L. R. 29 Mad. 459*, considered and not followed. *Kali Krishna Sarkar* v. *Raghunath Deb, I. L. R. 31 Calc. 224*, not followed. RAJAH OF KALAHASTI v. ACHIGADU (1905) **I. L. R. 30 Mad. 454**

IMPRISONMENT.

See FALSE IMPRISONMENT.

——nature of—

—Civil Procedure Code (Act XIV of 1882), s. 359—Imprisonment, whether to be simple or

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rigorous—Omission to specify the nature of the imprisonment when passing order under s. 359—The power to subsequently declare it to be rigorous—Jurisdiction—S. 622, Civil Procedure Code.—The imprisonment ordered under s. 359, Civil Procedure Code, may be either simple or rigorous, but the nature of the imprisonment must be specified when the order is made. *Government* v. *Radhoo Charan Ash, 18 W. R. Cr. 3,* referred to. When the Judge in passing orders under s. 359, Civil Procedure Code, omits to state whether the imprisonment awarded is to be simple or rigorous, it must be taken to be simple imprisonment. After the Judge has made an order under s. 359, his power under that provision of the law is exhausted and he has no jurisdiction subsequently by an administrative order passed without notice to the petitioner to determine that the imprisonment is to be rigorous. If he does so, his order is liable to be discharged by the High Court in the exercise of its revisional jurisdiction. SHEIKH AMIR ALI *v.* MATHOO SAHOO (1907).
11 C. W. N. 740

IMPROVEMENTS.

See BENGAL TENANCY ACT, s. 29 *(b)*.
11 C. W. N. 62

INAM.

—Madras Enfranchised Inams Act (IV of 1866)—Service inam enfranchised in widow's name under Act IV of 1866 not alienable by widow beyond her own life-time.—The enfranchisement of a service inam does not involve a resumption by Government and a fresh grant in favour of the persons named in the title-deed. It disannexes the inam from the office, converts it into ordinary property and releases the reversionary rights of the Crown in the inam, but does not confer on the persons named in the title-deed any rights in derogation of those possessed by other person in the inam at the time of the enfranchisement. Case law considered. *Narayana* v. *Chengalamma, I. L. R. 10 Mad. 1,* approved. *Gunnaiyan* v. *Kamakchi Ayyar, I. L. R. 26 Mad. 339,* approved. A Hindu widow cannot alienate beyond her own life-time service inam enfranchised in her name under Madras Act IV of 1866. PINGALA LAKSHMIPATHI *v.* BOMMIREDDIPALLI CHALAMAYYA (1907).
I. L. R. 30 Mad. 434

INAMDARS.

——tenants under—

See LANDLORD AND TENANT.
I. L. R. 30 Mad. 502

INCOME TAX.

See CESS, ASSESSMENT OF.
11 C. W. N. 1053;
I. L. R. 35 Calc. 82

See MINES. . **I. L. R. 34 Calc. 257**

INCUMBRANCES.

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See LANDLORD AND TENANT.
I. L. R. 34 Calc. 298

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See PRACTICE. **I. L. R. 31 Bom. 465**

INDIGO FACTORY.

See LANDLORD AND TENANT.
I. L. R. 34 Calc. 718

INFANT.

See GUARDIAN.

See MINOR.

——contract by—

—Contract Act (IX of 1872), ss. 10, 11, 68. 247 and 248—Infant's contracts, if illegal—Bond securing debts contracted during minority as well as sum advanced when adult, liability for—Fresh consideration—Infants Relief Act, 1874 (37 and 38 Vict., c. 62), s. 2.—There is nothing unlawful in an infant's paying for the property he has received and promised to pay for—only if he does not perform his promise he cannot be compelled by law to pay. *S*, an infant, had a business in piece-goods in the course of which he had various dealings with *K* and became indebted to her for a sum of Rs. 7,374-4, the price of goods supplied to his business. After attaining majority, *S* executed a *tumsook* or bond by which he covenanted to pay back within one year, the above sum as well as a further sum of Rs.76-12 advanced to him at the time of the execution of the *tumsook*. *Held,* that *S* was liable for the whole amount secured by the bond. KUNDAN BIBI *v.* SREE NARAYAN (1906) . **11 C. W. N. 135**

INFANTS' RELIEF ACT, 1874 (37 & 38 VICT., C. 62), s. 2.

See INFANT. . . **11 C. W. N. 135**

INFRINGEMENT OF TRADE-MARK.

See TRADE-MARK.
I. L. R. 34 Calc. 495

INHERENT POWERS.

See SMALL CAUSE COURTS ACT.
I. L. R. 31 Bom. 45

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See HINDU LAW.

See MAHOMEDAN LAW.

See NATIVE CHRISTIANS.
I. L. R. 31 Bom. 25

INJUNCTION.

See BHAGDARI AND NARWADARI ACT.
I. L. R. 31 Bom. 183

See MUNICIPALITY.
I. L. R. 31 Bom. 37

——suit for—

See JURISDICTION OF CIVIL COURTS.
I. L. R. 30 Mad. 400

1.—*Jurisdiction—Jurisdiction of High Court in granting injunctions in personam—Injunction to restrain proceeding with suit in Bareilly Court—Civil Procedure Code (Act XIV of 1882), ss. 492, 493.*—The plaintiffs, in a suit instituted in the High Court for money due on a balance of account, sought for an injunction to restrain the defendants from proceeding with a suit previously instituted in the Court of the Subordinate Judge at Bareilly, in which the present defendants sought to recover from the present plaintiffs a sum of money as balance due to themselves on the same account. *Held*, that the High Court was competent to grant the injunction. The powers of the High Court to grant temporary injunctions are not confined to the terms of ss. 492 and 493 of the Civil Procedure Code. MUNGLE CHAND *v.* GOPAL RAM (1906) . . **I. L. R. 34 Calc. 101**

2.—*Jurisdiction—General equity—Jurisdiction of High Court—Injunction to restrain proceeding with Small Cause Court suit—Civil Procedure Code (Act XIV of 1882), ss. 492, 493—Specific Relief Act (I of 1877), ss. 53, 54 and 55.*—The plaintiff in a suit instituted in the High Court for specific performance of an agreement for lease of certain premises sought for an injunction to restrain the defendant from proceeding with a suit instituted by the latter in the Small Cause Court for ejectment of the former from the same premises. *Held*, that the High Court has power under its general equity jurisdiction to grant an injunction of this character, independently of the Code of Civil Procedure. *Jairamdas Ganeshdas* v. *Zamonlal Kissorilal, I. L. R. 27 Bom. 357*, dissented from. *Hukum Chand Boid* v. *Kamalanand Sing, I. L. R. 33 Calc. 927, Hart* v. *Grosser, 9 C. W. N. 748, Mungle Chand* v. *Gopal Ram, I. L. R. 34 Calc. 101*, referred to. RASH BEHARY DEY *v.* BHOWANI CHURN BOSE (1906) . . . . **I. L. R. 34 Calc. 97**

INSANITY.

—*Unsoundness of mind—Delusion—Knowledge of the nature of the act—Penal Code (Act XLV of 1860), s. 84.*—Where the accused cut his wife's throat without any rational motive, and was captured at once without any attempt on his part to escape or offer resistance, and the evidence showed that before the commission of the offence he suffered from a failure of reasoning powers, and also that he entertained delusions as to dangers which threatened his wife: *Held*, that the facts proved unsoundness of mind which prevented the accused from knowing the nature of his act, and that s. 84 of the Penal Code applied. DIL GAZI *v.* EMPEROR (1907).
I. L. R. 34 Calc. 68

INSOLVENCY.

See CIVIL PROCEDURE CODE, s. 336.
I. L. R. 29 All. 466

See INSOLVENT ACT (11 & 12 VICT., C. 21)

—*Undischarged insolvent may sue for after-acquired property.*—An undischarged insolvent has, in respect of after-acquired property, moveable and immoveable, a right against all the world except the Official Assignee and may sue to recover such property if the Official Assignee does not intervene. SRIRAMULU NAIDU *v.* ANDALAMMAL (1906).
I. L. R. 30 Mad. 145

INSOLVENT ACT (11 & 12 VICT., C. XXI), ss. 7, 24.

See CONTRACT. **I. L. R. 34 Calc. 289**

INSPECTION OF DOCUMENTS.

See PRESIDENCY BANKS ACT.
I. L. R. 31 Bom. 319

—*Civil Procedure Code, s. 130—Discretionary power of Court under s. 130 not interfered with on revision—Such power should be exercised with caution.*—The High Court will not in revision interfere where a lower Court, in the exercise of its discretionary power, refuses inspection of documents produced before it under a sealed cover in obedience to an order under s. 130 of the Civil Procedure Code. The power of refusing inspection should, however, be exercised with great caution; and the opposite party should be allowed to inspect and take copies of the documents when they relate to matters in issue, unless they are privileged in law, relate *exclusively* to the case of the party producing them and contain nothing supporting or tending to support the other side. BALAMONEY *v.* RAMASAMI CHETTIAR (1906).
I. L. R. 30 Mad. 230

INSTALMENTS.

——payment by—

See DEKKHAN AGRICULTURISTS' RELIEF ACT . . **I. L. R. 31 Bom. 120**

1.—*Civil Procedure Code (Act XIV of 1882), s. 210—Power of High Court to make its money decrees payable by instalments.*—Under s. 210 of the Civil Procedure Code this Court has the power to make its money decrees payable by instalments. *Per* CURIAM: The general impression prevailing in the minds of money-lenders in Bombay, as echoed in the plaintiff's affidavit, that in all cases they can defeat the provisions of the Code as to payment by instalments and get a decree for immediate payment by avoiding the Small Causes Court and coming to this Court, is erroneous and needs to be corrected. POMA DONGRA *v.* WILLIAM GILLESPIE (1907).
I. L. R. 31 Bom. 348

2.—*Decree payable by instalments—Bengal Tenancy Act (VIII of 1885)—Rent suit—Instalment decree, power of Court to make—Civil Proce-*

INSTALMENTS—*concluded.*

dure Code (Act XIV of 1882), ss. 210, 622—High Court's power of revision.—A decree for rent under the Bengal Tenancy Act cannot be made payable by instalments, s. 210 of the Civil Procedure Code not applying to such a decree. Where a Munsif made an order for the payment of the amount of rent decreed by instalments, he committed an error of law only and not an error in the exercise of his jurisdiction, within s. 622, Civil Procedure Code. SHIBH NARAIN MOOKERJEE *v.* BAIKUNTHA NATH ISAR (1907) . . . **11 C. W. N. 857**

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See PENAL CODE (ACT XLV OF 1860), ss. 304 AND 325 . **I. L. R. 29 All. 282**

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INTEREST.

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See VALUATION OF SUIT. **I. L. R. 34 Calc. 954**

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See STAMP-DUTY. **11 C. W. N. 1120**

1. WHERE NO STIPULATION FOR INTEREST.

1.—Interest—*Hindu law—Debtor wrongfully withholding payment—Demand by creditor—Interest Act (XXXII of 1839)—Indian Contract Act (IX of 1872).*—The plaintiff sued to recover a sum of money with interest from the date of demand from the defendant, who held the money in deposit for her. There was no agreement between the parties to pay interest. The first Court dismissed the claim as to interest: but the lower appellate Court allowed interest on the amount of the deposit from the date of the demand by plaintiff to the date of payment. The parties to the suit were Hindus governed by the law of Mitakshara. *Held,* under special circumstances, that interest may be awarded by Courts in India, by way of damages. *Held,* further, that under Hindu Law as it is to be found in the Mitakshara there is annexed to each contract of debt, in which there is no agreement to pay interest, the term or incident that such loss shall be made up by the debtor, if he wrongfully withholds payment after demand: and that this incident was annexed to every such contract at the date when the Interest Act (No. XXXII of 1839) came into force. *Held,* further, that the parties being Hindus governed by the Mitakshara that constituted a special circumstance justifying the award of interest. *Hurropersaud Roy Chowdhry* v. *Shamcpersaud Roy Chowdhry, L. R. 5 I. A. 31,* applied. SAUNADANAPPA *v.* SHIVBASAWA (1907) . . **I. L. R. 31 Bom. 354**

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2. ON MORTGAGE DECREES.

2.—*Transfer of Property Act (IV of 1882), ss. 86, 88—Decree for sale on a mortgage—Rate of interest after date fixed for payment.*—Where a decree for sale on a mortgage gives interest after the date fixed by the decree for payments of the mortgage debt, it is not necessary that such interest should be at the contractual rate. *Rameswar Koer* v. *Mahomed Mehdi Hossein Khan, I. L. R. 26 Calc. 39,* and *Sundar Koer* v. *Rai Sham Krishen, I. L. R. 34 Calc. 150,* referred to. LACHMI NARAIN *v.* UMAN DAT (1907). . . . **I. L. R. 29 All. 322**

3. ON ARREARS OF RENT.

3.—*Bengal Tenancy Act (VIII of 1885), s. 169—Rent—Interest—Pleading.*—Where a landlord applied under s. 169, cl. (*c*) of the Bengal Tenancy Act for getting the rent and interest due to him between the date of the institution of the suit and the date of the sale from the surplus sale-proceeds and the judgment-debtor raised no objection to it but admitted the justice of the decree-holder's demand: *Held,* that the decree-holder was entitled to get interest on rent. GHOSH, *J.*—Rent as used in cl. (*c*) s. 169 does not exclude interest. BEJOY CHAND MOHATAB *v.* S. C. MOOKERJEE (1906). **11 C. W. N. 1106**

4.—*Bengal Tenancy Act (VIII of 1885), ss. 54 (3) 61, 67—Tender of rent—Refusal—Deposit in Court if essential to stop interest—Tender how kept good.—Held by a majority of the Full Bench* (RAMPINI, *A. C. J., and* MITRA, *J., dissenting*).—To stop interest on rent running in a case governed by the Bengal Tenancy Act a tender of rent which is improperly refused, need not be followed up by a deposit of rent in Court under s. 61, and such a tender, if kept good, is sufficient to stop interest running from the date of tender. A tender which has been validly made and improperly refused is kept good if the person who has made the tender has from that time always kept the money

INTEREST—*concluded.*

ready to be paid on demand. *Gyles* v. *Hall* 2 *P. Wms.* 378, followed. KRIPA SINDHU MUKERJEE v. ANNADA SUNDARI DEBI (1907).
11 C. W. N. 983; I. L. R. 35 Calc. 34

4. MISCELLANEOUS CASES.

5.—*Negotiable Instruments Act (XXVI of 1881), s. 80—Act No. XXVIII of 1855 (Usury Laws Repeal Act)—Interest—Rate of interest—Hundis silent as to interest—Collateral contemporaneous agreement fixing rate.*—In a suit on certain *hundis* which were silent as to interest, but as to which there was a collateral written agreement that they should bear interest at 30 per cent. per annum; and it was found that this mode of dealing with interest by a collateral agreement and not on the face of the *hundis* was in accordance with the custom prevailing in the district, and among the class affected by the suit: *Held*, that by Act XXVIII of 1855, interest was recoverable at the rate agreed upon by the parties, and s. 80 of the Negotiable Instruments Act (XXVI of 1881) was not applicable. That section purports to confer a right to interest not to take away such a right otherwise existing, nor to deprive a plaintiff of a right to interest which he has acquired by contract. GHANSHIAM LALJI v. RAM NARAIN (1906) . . . **I. L. R. 29 All. 33; L. R. 34 I. A. 6**

6.—*Bengal Tenancy Act, s. 67.*—Interest was claimed in the suit at a rate of more than 12 per cent. per annum on the basis of a kabuliyat executed before the passing of the Bengal Tenancy Act, the tenant being proved to have acquired the holding by private purchase. *Held*, that the stipulation as to interest must be given effect to. TILUK CHUNDRA RAY v. JASADA KUMAR RAY (1906) . . **11 C. W. N. 215**

INTESTACY.

See REGULATION No. V OF 1799, s. 7.
I. L. R. 29 All. 277

INVALID SALES.

See SALE IN EXECUTION OF DECREE.

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See CIVIL PROCEDURE CODE, s. 578.
I. L. R. 29 All. 562

See EXECUTION OF DECREE.

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See SALE FOR ARREARS OF REVENUE.
I. L. R. 34 Calc. 381

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JOINDER OF CAUSES OF ACTION.

See BENGAL TENANCY ACT, ss. 30, 52.
11 C. W. N. 1154

See CAUSES OF ACTION.

See MISJOINDER.

JOINDER OF CHARGES.

See CHARGE.

1.—*Criminal Procedure Code, ss. 222, 233, 234, 235—Three distinct offences of criminal breach of trust and three distinct offences of falsifying accounts cannot be tried together.*—It is illegal to try a person on a charge which alleges three distinct acts of criminal breach of trust and three distinct acts of falsifying accounts. S. 234 of the Code of Criminal Procedure will not apply, as the offences of criminal breach of trust and falsification of accounts are not of the same kind; neither will s. 235 cover the case, as the several offences cannot be said to form part of the same transaction. *King-Emperor* v. *Nathlal Bapuji, 4 Bom. L. R. 433*, referred to. Although, under s. 222 of the Code of Criminal Procedure, a charge for the gross amount misappropriated within a period of twelve months shall be deemed to be a charge of one offence within s. 234; it does not follow that the acts so charged should be considered to be one transaction within the meaning of s. 235. KASI VISVANATHAN v. EMPEROR (1907).
I. L. R. 30 Mad. 328

2.—*Joinder of charges—Criminal Procedure Code (Act V of 1898), ss. 235, 307—One transaction—Criminal Procedure Code—Reference against verdict of jury—High Court's power and duty.*—In a reference under s. 307, Criminal Procedure Code, although the High Court is bound in dealing with it to give due weight to the opinion of the Sessions Judge and the verdict of the jury, still it can decide for itself the question of guilt or otherwise of the accused. Where the accused was tried on seven charges—three of cheating, under s. 420, Indian Penal Code: two of forgery under ss. 466 and 468, Indian Penal Code, one of using as genuine a forged document under s. 471, Indian Penal Code, and one of cheating by personation under s. 419, Indian Penal Code: *Held*, that under the circumstances of the case, the trial of the accused on all these charges was perfectly regular under s. 235, Criminal Procedure Code, as the offences with which the accused was charged all formed one transaction. *Birendra Lal* v. *The Emperor, I. L. R. 30 Calc. 822*, and

JOINDER OF CHARGES—*concluded.*

Bhagwath Dial v. *The King-Emperor, 2 Cr. L. J. 34,* distinguished. *The Emperor* v. *Sherufalli Allibhoy, I. L. R. 27 Bom. 135,* referred to and followed. EMPEROR *v.* SRI NARAIN PRASAD (1907) . . . . . **11 C. W. N. 715**

3.—*Criminal Procedure Code (Act V of 1898), ss. 233,537—Charge—One charge for three different offences, if legal—Error in form—Prejudice.*—Where under an arrangement made with the concurrence of their pleaders the accused were jointly tried for three offences committed against 3 different persons on the same date and forming part of the same transaction, and there was framed one charge against them, instead of three, and it ran thus: "That you on or about the 3rd July at B. committed theft of paddy from the fields of (*a*) Srinath Das, (*b*) Jhumar Pramanick, (*c*) Lasker Pramanick, and thereby committed an offence punishable under s. 379 of the Indian Penal Code and within my cognizance." *Held,* that although strictly speaking three separate charges should have been drawn up in identical terms for the three offences under s. 379, Indian Penal Code, yet as in the one charge framed the three offences had been kept separate and were distinguished by the letters (*a*), (*b*) and (*c*), the error in framing one charge, was an error in form rather than in substance, and as such did not amount to an illegality but was an irregularity which would be cured by the provisions of s. 537, Criminal Procedure Code, unless it was shown that the accused had been prejudiced or that a failure of justice had been occasioned in consequence thereof. *Gul Mahomed Sircar* v. *Cheharu Mandal, 10 C. W. N. 53,* and *Budhai Sheikh* v. *Tarap Sheikh, 10 C. W. N. 32,* distinguished. MOHARUDDI MALETA *v.* JADU NATH MANDUL (1906) . . **11 C. W. N. 54**

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See MISJOINDER.

See PARTIES.

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See CIVIL PROCEDURE CODE, s. 317.
I. L. R. 29 All. 557

JOINT FAMILY.

See CIVIL PROCEDURE CODE, s. 13.
I. L. R. 29 All. 1

See HINDU LAW.

See PARTIES.

See STOLEN PROPERTY.
I. L. R. 29 All. 598

JOINT POSSESSION.

—Lessees from Co-sharers—Joint owners—Separate leases by different co-sharers of lands in their exclusive possession—Right of one lessee to have joint possession with another—Right to partition.—The owners of an *ejmali* mehal severally leased out lands in the exclusive possession of each to different lessees. One of the lessees having obtained his lease in the *bona fide* belief that the land covered by it belonged in its entirety to his lessor reclaimed and improved it, and was then sued by the other for joint possession. *Held,* that it would be inequitable to give the plaintiff the relief he asked for and his proper remedy was to bring a suit for partition. SYED ALI *v.* NAJAB ALI (1906). **11 C. W. N. 143**

JOINT PROPERTY.

See CO-SHARER.

See CRIMINAL PROCEDURE CODE, s. 145.
11 C. W. N. 512

JOINT TENANT.

See LANDLORD AND TENANT—RENT.
11 C. W. N. 1026

JOINT TRIAL.

—Joint trial of several distinct complaints—Illegality—Omission to take objection—Criminal Procedure Code (Act V of 1898), ss. 233 and 234—Proprietor of a market, rights of—Itinerant stall-keepers, rights of—Ijaradar of a market, his right to prevent the sale of foreign goods—Binding ijaradar down for exceeding his rights.—Where three persons laid three separate complaints against the accused alleging that they (the accused) committed rioting and individually caused hurt to each of the complainants and threw away and spoilt their foreign salts and other articles: *Held,* that though the origin and the preparations for the commission of the offences might be the same, the offences were distinct from each other and the joint trial of the accused for the offences was illegal and the illegality could not be cured by the fact that no objection to the joint trial was taken either in the Court of first instance or the Appellate Court. The illegality has affected the jurisdiction of the Court. That s. 234, Criminal Procedure Code, does not authorise such a joint trial, as that section refers to different acts done by the same individual or sets of individuals against the same complainant or complainants so connected with each other that they may in law be taken to be one person. In this country there is no special law for regulating the establishment and the carrying on of a market. The owner of land may establish a market wherever on his own land and whenever he desires to do, provided he does not commit an offence involving disturbance of public peace by establishing the market close to another existing market. The proprietor of a market may regulate the sales and the conduct of stall-keepers provided his conduct does not disturb public tranquillity or he does not commit an offence punishable by law. The proprietor has the right to prevent itinerant stall-keepers but not

JOINT TRIAL—*concluded.*

permanent stall-keepers from selling any article he may choose to prevent the sale of. *Raj Kumar Chuckerbutty* v. *The Emperor, 11 C. W. N. 28,* followed. Itinerant stall-keepers who are mere licensees, are entirely under the control of the owner of the market. These rights of the proprietor can be exercised by the *ijaradar* of the market during the term of his *ijarah*. Where the *ijaradar* of a market with a view to prevent the sale of foreign articles used force and caused hurt to certain itinerant stall-keepers: *Held,* that the *ijaradar* exceeded his right under the law and was punishable. But he could not be bound down to keep the peace as an order under s. 106, Criminal Procedure Code, would practically prevent him from exercising his legal rights. NANDA KUMAR SIKKAR *v.* THE EMPEROR (1907) . . . . **11 C. W. N. 1128**

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— expression of opinion on facts by—

See JURY, TRIAL BY.
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See CIVIL PROCEDURE CODE.
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—*Judgment written by Judge after taking leave and pronounced by successor—Civil Procedure Code (Act XIV of 1882), s. 199.*—The Judge, who has heard the evidence in a case, is entitled under s. 199 of the Civil Procedure Code to write his judgment and to send it to his successor for delivery, although the judgment was written by him after he had taken leave or left the post which he was occupying, when he heard the case. *Mussamut Parbutty* v. *Mussamut Higgin, 17 W. R. 475,* referred to. SUNDAR KUAR *v.* CHANDRESHWAR PRASAD NARAIN SINGH (1907).
I. L. R. 34 Calc. 293

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See OCCUPANCY HOLDING.
I. L. R. 34 Calc. 199

See WRONGFUL CONFINEMENT.
I. L. R. 30 Mad. 179

JUDGMENT-DEBTOR—*concluded.*

—*Civil Procedure Code, ss. 244, 331—Defendants not joining in compromise on which decree is passed not judgment-debtors—S. 331 applies to such defendants.*—Where a decree passed on compromise entered into between the plaintiff and some of several defendants in a suit does not adjudicate on the rights of the defendants who have not joined in the compromise, such defendants are not judgment-debtors and any disputes arising in execution of the decree between the plaintiff and such defendants must be decided under s. 331 and not under s. 244 of the Code of Civil Procedure. *Vibhudapriya Thirthaswami* v. *Vidianidhi Thirthaswami, I. L. R. 22 Mad. 131,* doubted. JATHAVEDAN NAMBUDIRI *v.* KUNCHU ACHAN (1906).
I. L. R. 30 Mad. 72

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I. L. R. 29 All. 66

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I. L. R. 29 All. 69

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I. L. R. 31 Bom. 236

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See CIVIL PROCEDURE CODE, SS. 206, 632.
I. L. R. 31 Bom. 44

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I. L. R. 29 All. 379

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1. MAMLATDARS' COURT.

1.—*Jurisdiction—Mamlatdars' Courts Act (Bom. Act III of 1876) s. 4—Mamlatdars' Courts Act (Bom. Act II of 1906), s. 5—Mamlatdars' Court—Suit for possession of a house situate within a town—Jurisdiction—Act of procedure—Repealed statute.*—A suit for the recovery of possession of a house situate within a town was instituted in the Court of a Mamlatdar while the Mamlatdars' Courts Act (Bom. Act III of 1876) was in force, but before the suit was finally decided that Act was repealed and the Mamlatdars' Courts Act (Bom. Act II of 1906) had come into operation. *Held,* that the Mamlatdar had no jurisdiction to decide the suit. VAJECHAND *v.* NANDRAM (1907). . **I. L. R. 31 Bom. 545**

2. SAMPALPUR.

2.—*Jurisdiction—Appeal—Sambalpur—Court to which appeal lies—Bengal and Assam Laws Act (VII of 1905), ss. 2, 3, 6—Bengal and North-West Provinces Civil Courts Act (XII of 1887)—Central Provinces Civil Courts Act (II of 1904)—Bengal Act IV of 1906—High Court, jurisdiction of.*—Where a suit instituted in the Court of the Subordinate Judge of Sambalpur was disposed of before the 16th of October 1905 when the Bengal and Assam Laws Act (VII of 1905) came into force and an appeal was preferred to the District Judge of Sambalpur after that date: *Held,* that a second appeal from an order made by the District Judge in the case lay to the High Court of Bengal, and not to the Court of the Judicial Commissioner of the Central Provinces; and that there was nothing in Bengal Act IV of 1906 to affect the jurisdiction of the High Court to entertain such appeal. HARABATI *v.* SATYABADI BEHARA (1907).
I. L. R. 34 Calc. 636

3.—*Jurisdiction—Second Appeal—High Court, jurisdiction of—Sambalpur—Bengal and Assam Laws Act (VII of 1905), s. 6.*—An appeal was preferred to the High Court against the decision of the Divisional Judge of Raipur, Central Provinces, disposing of an appeal against the decision of the District Judge of Sambalpur, after the 16th of October 1905, on which date the Bengal and Assam Laws Act (VII of 1905) came into force, and the District of Sambalpur was added to the Province of Bengal by a Proclamation of the Governor-General. On preliminary objections being taken that no second appeal lay in the case under the provisions of s. 15 of the Central Provinces Courts Act (II of 1904), and that the second appeal, if any, lay to the Judicial Commissioner of the Central Provinces under s. 6 of Act VII of 1905: *Held,* that although the Central Provinces Courts Act (II of 1904) did not expressly provide for a second appeal from the decision of the Divisional Judge to the Judicial Commissioner, yet such an appeal formerly lay under the provisions of s. 584 of the Code of Civil Procedure (Act XIV of 1882) to the Judicial Commissioner of the Central Provinces, but now after the passing of the Bengal and Assam Laws Act (VII of 1905), to the High Court. BALBHADRA *v.* BHOWANI (1907).
I. L. R. 34 Calc. 853

3. SUITS RELATING TO RITUAL OR RELIGIOUS OBSERVANCES.

4.—*Subject-matter of suit of mixed spiritual and temporal character—If the two intimately connected, a Court can enquire into the spiritual matter—Right to bury dead is a civil right.*—Although Courts in this country have no jurisdiction in suits relating to ritual or religious observance only, the Courts are bound to inquire into questions of religion or ritual which are material for the determination of civil disputes; and when the matter in dispute is of a mixed spiritual and temporal nature jurisdiction to inquire into the spiritual question will depend upon whether it is so intimately connected with the temporal as to be inseparable from it. The right of burial is a civil right: and an interference with the right of reciting prayers in connection with such burial is an invasion of the civil right. *Anandrav Bhikaji Phadke* v. *Shankar Daji Charya, I. L. R. 7 Bom. 323; Ram Rao* v. *Rustumkhan, I. L. R. 26 Bom. 198,* referred to. KOONI MEERA SAHIB *v.* MAHOMED MEERA SAHIB (1906) . . . . **I. L. R. 20 Mad. 15**

5.—*Jurisdiction—Removal or alteration of religious marks is an interference with property of which Civil Courts can take cognisance—Injunction against trustees of temples—No injunction to restrain an act which although an innovation does not interfere with worship.*—Removal or alteration of *namams,* or religious marks, in a temple amounts to an interference with property, and will be a ground for action in the Civil Courts. The trustees of a temple may be restrained by injunction from making unjustifiable changes which would affect the character of the temple as a religious institution. Where, in a temple in which two rival sects

JURISDICTION OF CIVIL COURTS—*continued.*

JURISDICTION OF CIVIL COURTS— *continued.*

following rival gurus have interest and worship, the trustee introduces a new metal idol, in addition to the existing stone idol of one of the rival gurus, such introduction, when not effected at the expense of the temple and when it does not interfere with the worship of the rival sect, is not inconsistent with the usage of the institution and ought not to be restrained by an injunction. KRISHNASAMI AYYANGAR *v.* SAMARAM SINGRACHARIAR (1906).

I. L. R. 30 Mad. 158

4. MISCELLANEOUS CASES.

6.—*Award of costs—Such award not a nullity—Civil Procedure Code (Act XIV of 1882), s. 646B.*—A Court of First Instance having no jurisdiction, tried and decided a suit passing a decree in favour of the plaintiff with costs. On appeal the decree was reversed on the merits and the suit was dismissed with costs of both Courts. All the parties and both the Courts had proceeded on the assumption that the Lower Court had jurisdiction. *Held*, that the award of costs by the Appellate Court was not a nullity and such amount was recoverable. S. 646 of the Code of Civil Procedure is an enabling section and does not cut down the jurisdiction of the appellate tribunal. SIMHADRI APPA RAO *v.* CHELASANE BHADRAYYA (1906).

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7.—*Order of Magistrate for maintenance under s. 488 of the Code of Criminal Procedure does not oust the jurisdiction of Civil Courts—No injunction to restrain proceedings on order under s. 488.*—The first defendant obtained an order for maintenance under s. 488 of the Code of Criminal Procedure against plaintiff. In a suit brought by plaintiff subsequently against the first defendant and her minor son, the second defendant, for a declaration that the defendants had no right to a share in or maintenance out of his properties: *Held*, (*1*) that the suit was not one to set aside the Magistrate's order for maintenance and was sustainable. The Magistrate's order did not take away the jurisdiction of the Civil Courts. (*2*) No suit will lie for an injunction to restrain proceedings under an order made by a Magistrate under s. 488 of the Code of Criminal Procedure. *Veeran* v. *Ayyammah, 2 Weir 615*, approved. *Mahomed Abid Ali Kumar Kadar* v. *Ludden Sahiba, I. L. R. 14 Calc. 276*, followed. *Subhudra* v. *Basdeo Dube, I. L. R. 18 All. 29*, explained. DERAJE MALINGA NAIKA *v.* MARATI KAVERI (1907) . . **I. L. R. 30 Mad. 400**

8.—*Jurisdiction—Election of Councillor, validity of—Applicant's right to question election—Chief Judge of Small Cause Court has sole jurisdiction to try suits relating to election petitions—Jurisdiction of High Court—Civil Procedure Code (Act XIV of 1882), s. 11—City of Bombay Municipal Act (Bombay Act III of 1888), s. 33.*—Under s. 33 the Chief Judge of the Small Cause Court has jurisdiction to determine the validity of a contested election. The High Court has no jurisdiction to

JURISDICTION OF CIVIL COURTS— *concluded.*

entertain such a suit. Where a special tribunal, out of the ordinary course, is appointed by an Act to determine questions as to rights which are the creation of that Act, then, except so far as otherwise expressly provided or necessarily implied, that tribunal's jurisdiction to determine those questions is exclusive. It is an essential condition of those rights that they should be determined in the manner prescribed by the Act, to which they owe their existence. In such a case there is no ouster of the jurisdiction of the ordinary Courts for they never had any. The jurisdiction of the Courts can be excluded not only by express words but also by implication, and there certainly is enough in s. 33 of the Municipal Act for this purpose. *Semble*: If the High Court has jurisdiction there might be a conflict between the view of the High Court and the order of the Chief Judge in which the order of the Chief Judge must by the express terms of the Act prevail. BHAISHANKAR *v.* THE MUNICIPAL CORPORATION OF BOMBAY (1907) . . **I. L. R. 31 Bom. 604**

9.—*Madras Hereditary Village Offices Act (III of 1895), ss. 13, 21—S. 21 applies to cases where defendant denies that lands claimed by plaintiff are emoluments.*—The jurisdiction of Civil Courts is excluded by s. 21 of the Madras Hereditary Village Offices Act in cases in which the plaintiff sues for lands as emoluments of his office and the defendant resists the claim on the ground that the land is not the emolument of the office. Such a suit is not the less a suit for emoluments within the meaning of the section because the defendant resists the claim on such ground. *Ravuthu Kounden* v. *Muthu Kounden, I. L. R. 13 Mad. 41*, distinguished. KESIRAM NARASIMHULU *v.* NARASIMHULU PATNAIDU (1906).

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JURISDICTION OF CRIMINAL COURTS.

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See JURISDICTION OF MAGISTRATES.

1. GENERAL JURISDICTION.

1.—*Prosecution—Information of a cognizable and a non-cognizable offence—Police reporting the case as non-cognizable—Magistrate's acceptance of the report—Magistrate's subsequent order calling for a charge sheet from the Police for the cognizable offence—Illegality.*—Where on an information having been lodged before the Police charging the accused with a cognizable and a non-cognizable offence the Police reports that the charge

JURISDICTION OF CRIMINAL COURTS—*continued.*

of the cognizable offence is false and the Magistrate accepts the police-report and passes orders accordingly, the Magistrate cannot subsequently order the police to send up the charge-sheet for the cognizable offence, if there appears nothing in the police-report or on the materials before the Magistrate to support a charge of such an offence. Where in such a case on the order of the Magistrate, the police sends up a charge-sheet for the cognizable offence and proceedings are commenced against the accused: *Held,* that the proceedings so taken are bad and ought to be quashed. MOKAMLJI DAS *v.* EMPEROR (1906).

11 C. W. N. 832

2.—*Criminal Procedure Code, ss. 408, 435—Jurisdiction—Appeal from First-class Magistrate lies to the Sessions Court, within whose jurisdiction the Court of the Magistrate ordinarily sits—'Situate,' meaning of.*—The Court of Sessions to which appeals lie from Magistrates of the First Class under s. 408 of the Code of Criminal Procedure in the Court of Sessions within the local limits of whose jurisdiction the Court of such Magistrate ordinarily sits, whether the offence be committed within such local limits or not. The word 'situate' in s. 435 of the Code of Criminal Procedure refers to the place where the inferior Courts mentioned therein ordinarily sit. The principle laid down in s. 435 in regard to revisional powers, must, in the absence of any indication to the contrary in the Code, be followed in the case of appeals under s. 408. VALIA AMBU PODUVAL *v.* EMPEROR (1906) . **I. L. R. 30 Mad. 136**

3.—*Criminal Procedure Code (Act V of 1898), s. 144—Jurisdiction of Magistrate—Interlocutory orders—Rule issued by High Court—Seisin of case—Extension of time—Rival hâts.*—A Magistrate cannot by passing successive orders under s. 144, Criminal Procedure Code, extend the operation of an order indirectly beyond the time limited by sub-s. (5) of s. 144. Where the first and initial order passed by a Magistrate was in substance and form an order under sub-s. (2) and forbade certain persons from establishing a *hât* at a certain place and gave a vague direction to them forbidding interference with the trade of another *hât*: *Held,* that the order was irregular and vague and could not stand. As long as an order under s. 144 has legal operation, no intermediate or interlocutory order not contemplated by sub-s. (4) can be passed. When the High Court has issued a rule in any case, it takes full seisin of the case, and it is the High Court alone that can pass *ad interim* orders in the case. The Magistrate against whose order the rule is issued has no such jurisdiction. The most appropriate section of the Code to deal with cases of rival *hâts* which may cause a breach of the peace is s. 107, Criminal Procedure Code. SATISH CHANDRA ROY *v.* EMPEROR (1906) . . **11 C. W. N. 79**

2. CATTLE TRESPASS ACT.

4.—*Jurisdiction—Cattle Trespass Act (I of 1871), s. 20—Illegal seizure of cattle—"Offence"*

JURISDICTION OF CRIMINAL COURTS—*concluded.*

—Power of District or specially authorized Magistrate to transfer such case—Subordinate Magistrate, power of, to try—Criminal Procedure Code (Act V of 1898), ss. 4 (o), 192, and Sch. II, last clause.—The illegal seizure or detention of cattle, referred to in s. 20 of the Cattle Trespass Act (I of 1871), is an "offence" under s. 4 (*o*) of the Criminal Procedure Code of 1898, and is, by virtue of the last clause of Sch. II thereof, triable by any Magistrate; and though under s. 20 of the Cattle Trespass Act, a complaint of such illegal seizure or detention must be entertained by a District Magistrate or one specially authorized as required by the section, such Magistrate has power, under s. 192, to transfer such cases, after taking cognizance, to any Subordinate Magistrate for trial. *Shama* v. *Lechhu Shekh, I. L. R. 23 Calc. 300,* and *Raghu Singh* v. *Abdul Wahab, I. L. R. 23 Calc. 442,* declared obsolete. BUDHAN MAHTO *v.* ISSUR SINGH (1907).

I. L. R. 34 Calc. 926

3. DISPUTES CONCERNING LAND.

5.—*Jurisdiction—Dispute concerning land—Jurisdiction of Magistrate—Order on written statements without any evidence—High Court jurisdiction of—Criminal Procedure Code (Act V of 1898), s., 145, sub-ss. (1), (4).*—Sub-s. (*i*) is not the only provision in s. 145 of the Criminal Procedure Code, which lays down what matters relate to the jurisdiction of the Magistrate. There are other provisions in the section, the contravention of which affects his jurisdiction, and so gives the High Court power to interfere. Where the Magistrate passed an order under s. 146 of the Code, only upon the written statements of the parties and without taking any evidence: *Held,* that the order was without jurisdiction, and that the High Court had power to set it aside. *Suriya Kanta Acharjee* v. *Hem Chunder Chowdhry, I. L. R. 30 Calc. 508,* followed. *Sukh Lal Sheikh* v. *Tara Chand Ta, I. L. R. 33 Calc. 68,* explained. KOLHA KOER *v.* MUNESWAR TEWARI (1907).

I. L. R. 34 Calc. 840

6.—*Criminal Procedure Code (Act V of 1898), s. 145, cl. (b)—Jurisdiction of Magistrate to maintain parties in separate possession.*—Where in a proceeding under s. 145 of the Criminal Procedure Code, in respect of a dispute concerning land the Magistrate finds that one party has been in possession of a portion of the land in dispute, and the other party in possession of the rest, and the possession of the one is likely to interfere with the enjoyment of the possession of the remaining portion by the other, the Magistrate can, in the exercise of jurisdiction vested in him under s. 145, Criminal Procedure Code, maintain both the parties in possession of their respective portions. *Katras Jherria Coal Company* v. *Shib Kristo Daw, I. L. R. 22 Calc. 297,* distinguished. KANGALI DAS BAIRAGI *v.* MUTI LAL BAGDI (1906) . . . **11 C. W. N. 743**

JURISDICTION OF MAGISTRATES.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 145, 146.
I. L. R. 34 Calc. 840

JURY, TRIAL BY.

See CHARGE TO JURY.

See VERDICT OF JURY.

—*Criminal Procedure Code, s. 307—Jury not to be questioned as to reasons for verdict.*—When the jury return a verdict on the general issue of guilty or not guilty and there is no ambiguity as to the precise offence of which the accused are convicted or acquitted, the Sessions Judge has no power, under s. 307 of the Code of Criminal Procedure, to question the jury as to reasons for their verdict. EMPEROR *v.* SIBANADU (1907).
I. L. R. 30 Mad. 469

JUS DISPONENDI.

See CONTRACT. I. L. R. 34 Calc. 173

K

KABULIYAT.

See EVIDENCE ACT (I OF 1872), S. 91.
11 C. W. N. 62

KANOM (MALABAR LAW).

—*Transfer of Property Act (IV of 1882), ss. 59, 98—No notice necessary to determine kanom right—Renewal of kanom can be effected only by registered deed—Document, construction of.*—The demisor in an instrument of *kanom* added at the end the words 'you shall obtain a renewed demise on the expiration of every twelve years and thus hold the *kanom* and the corresponding *kychit* of the demise contained at the end the words 'I shall obtain a renewed demise on the expiration of every twelve years and thus hold the lands.' No mention was made of the rent payable on such renewals. No such renewal was made by a registered instrument although the demisee alleged that he had paid the renewal fees. In a suit by the demisor to redeem the *kanom*: *Held*, that the document contained no covenant for perpetual renewal. *Held*, also, that the transaction was not a mere lease, but was an anomalous mortgage under s. 98 of the Transfer of Property Act, and no notice was required as in the case of leases to determine it. *Held*, further, that a renewal can only be effected by a registered instrument under s. 59 of the Transfer of Property Act. *Kurri Veerareddy* v. *Kurri Bapireddy. I. L. R. 29 Mad. 336*, followed. GOPALAN NAIR *v.* KUNHAN MENON (1907) . I. L. R. 30 Mad. 300

KANYA.

See HINDU LAW—INHERITANCE.
I. L. R. 31 Bom. 495

KHARWA COMMUNITY OF BROACH.

See HUSBAND AND WIFE.
I. L. R. 31 Bom. 366

KHOTI SETTLEMENT ACT (BOM. ACT I OF 1880).

——ss. 3 (5), 9, 10—

—*Privileged occupant—Dharekari, quasi-Dharikari, Occupancy tenant—Transfer of land to another on sale—Not a resignation so as to be at the disposal of the Khot.*—By transferring his land on sale, an occupant does not resign it within the meaning of s. 10 of the Khoti Act (Bom. Act I of 1880), so as to place the land at the disposal of the Khot. RAMCHANDRA *v.* DATTATRAYA (1907).
I. L. R. 31 Bom. 267

KHOTS.

—*Khots of the whole village—Alluvions—Right of the Khot to the alluvion—Land, Revenue Code (Bombay Act V of 1879), s. 37.*—The Khots of the village of Bele Budruk in the Ratnagiri District asserted a claim to occupy and cultivate lands left dry in the river bed as far as the middle of the bed opposite their Khoti village. The lands in question were treated for nearly a hundred years as part of the village. *Held*, that plaintiffs were entitled to the right claimed and that s. 37 of the Land Revenue Code (Bombay Act V of 1879) presented no bar to the same. The construction to be placed on the words "are hereby declared" in a statute discussed. SECRETARY OF STATE *v.* WASUDEO (1907) . . . . I. L. R. 31 Bom. 456

KIDNAPPING.

See CRIMINAL PROCEDURE CODE.
I. L. R. 31 Bom. 218

——from lawful guardianship—

See PENAL CODE, S. 363.
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KONDH, COURT OF NATIVE COMMISSIONER OF.

See EXECUTION OF DECREE.
I. L. R. 34 Calc. 576

KURSINAMA.

See EVIDENCE, ADMISSIBILITY OF.
I. L. R. 34 Calc. 1059

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LAMBARDAR AND CO-SHARER.

See AGRA TENANCY ACT (LOCAL II OF 1901), SS. 164 (2), 156.
I. L. R. 29 All. 15

1.—*Powers of lambardar to deal with coparcenary lands—Lease for seven years.*—In the

LAMBARDAR AND CO-SHARER—*concluded.*

absence of a custom to the contrary a lambardar has no power without the consent of the co-sharers to grant a lease of co-parcenary land beyond such term as the circumstances of the particular year or season may require. *Jagannath* v. *Hardyal, 1897 W. N. 207,* and *Bansidhar* v. *Dip Singh, I. L. R. 20 All. 438,* followed. CHATTRAY *v.* NAWALA (1906) . . . **I. L. R. 29 All. 20**

2.—*Powers of lambardar to deal with co-parcenary lands—Lease for seven years.*—In the case of a lease of co-parcenary land granted by a lambardar, where there is any suspicion established that the lambardar has granted a long lease to the detriment of co-sharers, a heavy burden would be placed on the lessee to show that by custom or for some other cause the lambardar is authorized in granting the lease. On the other hand where the granting of the lease is shown to be for the benefit of the co-sharers and when the co-sharers presumably have been shown to have derived benefit under the lease the lease should not be set aside. *Jagan Nath* v. *Hardayal, Weekly Notes, 1897, 207; Bansidhar* v. *Dip Singh, I. L. R. 20 All. 438; Mukta Prasad* v. *Kamta Singh, Weekly Notes, 1906, 277,* and *Chattray* v. *Nawala, I. L. R. 29 All. 20,* referred to. MUHAMMAD KAZIM *v.* MIAN KHAN (1907) . . **I. L. R. 29 All. 554**

3.—*Suit for profits—Nature of liability of two lambardars for the same village—Res judicata.*—Where there are two lambardars for the same village they may, as a matter of convenience, elect to divide the village between them for purposes of collection but such division will be purely a matter of convenience and will not affect the joint liability of the lambardars to the co-sharers. A co-sharer sued two lambardars jointly for profits, and the Court (an Assistant Collector) held that they were not liable to be sued jointly and dismissed the suit. The plaintiff did not appeal, but filed separate suits. *Held,* that this decision did not amount to a *res judicata* as to the lambardars' joint or separate liability in a subsequent suit by the same co-sharer against them for profits of other years. KAMTA SINGH *v.* MUKHTA PRASAD (1907).
I. L. R. 29 All. 287

LAND.

——acquisition of—

See LAND ACQUISITION ACT.

——let for agricultural purposes—

See LANDLORD AND TENANT.
I. L. R. 34 Calc. 718

——utility of—

See COMPENSATION.
I. L. R. 34 Calc. 599

LAND ACQUISITION ACT (I OF 1894).

——ss. 3 (*a*), 23 (3)—

—When land is acquired with trees on it, the 15 per cent. ought to be calculated on the value of both.—Trees are things attached to the earth and are thus included in the definition of land in s. 3 (*a*) of the Land Acquisition Act; and this definition must be applied in the construction of s. 28 of the Act. The value of such trees as are on the land when the declaration is made under s. 6 is included in the market value of the land on which the allowance of 15 per cent. is to be calculated under s. 23 (2) of the Land Acquisition Act SUB-COLLECTOR OF GODAVARI *v.* SERAGAN SUBBAROYADU (1906).
I. L. R. 30 Mad. 151

——ss. 9, 12, 18—

—Notice—Irregularity in the notice, effect of—Valid award, requirements of—Ferry—Compensation for a ferry—Railways Act (IX of 1890) s. 10, sub-s. (2)—Limitation Act (XV of 1877), Sch. II, Art. 120—Damages, measure of.—Where notice under s. 9 of the Land Acquisition Act does not contain the material facts, which would enable the landowner to identify the land intended to be taken up, and where the land to be acquired is affected with a franchise, the franchise is not described, and the notice fixes less than the prescribed time to prefer claims, these being irregularities, a suit for damages for permanent injury to a ferry caused by acquisition under the Land Acquisition Act, is maintainable in the Civil Court notwithstanding an award has been made by the Deputy Collector, not allowing any compensation for the ferry, as it was not claimed even after a special notice. Sub-s. (2) of s. 10 of the Railways Act does not bar a suit for compensation in the Civil Court when the Collector refuses to adjudicate upon the claim put forward by the owner. A suit will lie in the Civil Court in respect of claim for damages which could not be foreseen at the time of the acquisition proceedings. A suit to recover compensation for land acquired instituted on the refusal of the Collector to award any compensation under the Land Acquisition Act, is governed by Art. 120 of Sch. II of the Limitation Act, the right to use accruing either from the date of the acquisition or the refusal by the Collector to award compensation. The mere construction of a railway bridge across a river whereby the profits of the ferry are reduced, does not entitle the owner to claim damages; but where lands and both banks of the river, which were used as landing places for the ferry, were acquired for the purpose of a railway bridge, and the access to the river and with it the exercise of the franchise was destroyed, the owner was entitled to compensation. The value of a ferry ought not to be determined by ascertaining the average profits at the date of the acquisition by regarding it as an invariable quantity and by taking a number of years' purchase. The damages ought to be calculated on the basis of the average profits from the ferry. RAMESWAR SINGH *v.* SECRETARY OF STATE FOR INDIA (1907).
I. L. R. 34 Calc. 470

LAND ACQUISITION ACT (I OF 1894) —*continued.*

——ss. 11, 21—

—Market value—Bases of its calculation—Speculative advance in prices—Recent instances of sale—Rental of lands in the vicinity—General demand for land—Onus probandi.—Profit from the most advantageous disposition of land is one test for determining its market price. The probable use of land in the most advantageous way in accordance with the use already made of neighbouring lands leads to speculative advance in prices to which regard should be paid. The utility of land is an element for consideration in estimating its value, that is, the utility which may be calculated by a prudent business man. *Premchand Burral* v. *Collector of Calcutta, I. L. R. 2 Calc. 108, Hughly Mills Company* v. *Secretary of State,* unreported; *Secretary of State for Foreign Affairs* v. *Charlesworth, Pilling & Co., L. R. 28 I. A. 121; Rajendra Nath Bonerjee* v. *Secretary of State, I. L. R. 32 Calc. 343,* referred to. The market value of the acquired lands is also to be ascertained from recent instances of sales in the same or in the adjoining localities, and from the average rental of these and similar lands in the vicinity. S. 21 of the Act authorizes the Judge to confine his enquiry into valuation to the interests of persons affected by the Collector's reference, but the section must mean the admitted interests. If there is any dispute as to the relative value of such interest, the Judge should determine the total amount payable for the land leaving the question of apportionment to be decided in a separate proceeding. The general demand for land, and the consequent reflex action on the prices of all classes of lands, is a factor in the calculation of the market value of lands under acquisition. The *onus probandi* varies according to the probative value of the Collector's inquiry under s. 11 of the Act, and if he makes no inquiry or gives no reasons for his valuation the *onus* on the claimant is nominal, and the Special Judge must decide on the weight of evidence. FINK *v.* SECRETARY OF STATE FOR INDIA (1907).

I. L. R. 34 Calc. 599

——ss. 18, 20, 21—

—Compensation—Apportionment—Reference to Court—Objection taken before Court by party who had raised no objection before Collector.—In a proceeding under the Land Acquisition Act, a party who had raised no objection to the apportionment of compensation made by the Collector must be taken to have accepted the award in that respect. Under ss. 18, 20 and 21 of the Land Acquisition Act all that the Court can deal with is the objection which has been referred to it; it cannot go into a question raised for the first time by a party who had not referred any question or raised any objection to it under s. 18 of the Act. ABU BAKAR *v.* PEARY MOHON MUKERJEE (1907).

I. L. R. 34 Calc. 451

——ss. 19, 23—

—Market value—Proof—Onus—Omission of Collector to state grounds—Effect—Calcutta Municipal Act (III B. C. of 1889), s. 557—Bustee land—Valuation on the basis of best use, if permissible—Special Judge—Jurisdiction to assess compensation outside the limits of the declaration.—The methods of valuation of land acquired under Act I of 1894 may be classified under three heads: (*1*) The opinion of valuators or experts, (2) the price paid within a reasonable time in *bonâ fide* transactions of purchase of the lands acquired or the lands adjacent to the land acquired and possessing similar advantages, and (3) a number of year's purchase of the actual or immediately prospective profit from the lands acquired. It is generally necessary to take two or all of these methods of valuation in order to arrive at a fairly correct valuation. Exact valuation is practically impossible, the approximate market value is all that can be aimed at. Much reliance cannot be placed on the evidence of experts unless it is supported by or coincides with other evidence. The burden of proof is ordinarily on the claimant in the Court of the Special Judge to prove that the valuation made by the Collector is insufficient. But the burden must vary according to the nature of the enquiry made by the Collector. If no evidence has been taken by the Collector, and if no reasons have been given in his decision to support his conclusion the claimant has a very light burden to discharge. The *ipse dixit* of a Collector has very little weight and is not *primâ facie* evidence of the correctness of his award. The failure of the Collector in making a reference under s. 18 of the Land Acquisition Act to state the grounds on which the amount of compensation was determined as required by s. 19. cl. (*d*), makes it incumbent on the Collector to justify the award before the Special Judge. S. 557 of the Calcutta Municipal Act precludes any valuation based on the most advantageous disposition of land, *e.g.*, a valuation of bustee land on the supposition of its adaptability for use as building land to carry expensive structures which is the most advantageous use to which land can be put in Calcutta. Both the Collector and the Special Judge under Act I of 1894 have limited jurisdiction. They are bound by the official declaration in the local *Gazette*. The Collector cannot acquire or give possession of any land beyond the boundaries given in the declaration. If he does so he commits an act of trespass. He has to find out the precise quantity of land notified for acquisition within specified boundaries. Value the same under the provisions of the Act, and give possession accordingly. The Special Judge has to make similar enquiries. If the Local Government committed a mistake by giving an erroneous boundary, the Judge or Collector cannot cure the mistake. If the land acquired be for Government purposes, and if the Government takes possession of land beyond the limits prescribed by the declaration or in excess of the area for which compensation is paid, it trespasses on private land and is liable under the law of the country; and so is a company if the acquisition is for its purposes. But such excess land cannot be valued and compensation awarded for it under the provisions of the Act,

LAND ACQUISITION ACT (I OF 1894) —*concluded.*

HARISH CHANDRA NEOGY *v.* THE SECRETARY OF STATE FOR INDIA (1907) . **11 C. W. N. 875**

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11 C. W. N. 430

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1. ABANDONMENT.

1.—*Non-transferable occupancy holding, transfer of—Abandonment—Permissive possession under transferee—Landlord's suit for khas possession.*—Where a tenant having a right of occupancy not transferable by custom, had given up to the purchaser possession of all the culturable lands of the holding but remained in possession of homestead lands only by permission of the purchaser: *Held*, that this was sufficient to indicate that the raiyat had abandoned his holding and in such a case the landlord is entitled to eject the raiyat and the purchaser and get khas possession. SAILABALA DEBI *v.* SRIRAM BHATTACHARJI (1907).
11 C. W. N. 873

2. ABSOLUTE OWNERSHIP.

2.—*Site in abadi occupied by non-agricultural tenant—Adverse possession—License—Indian Easements Act (V of 1882), s. 60.*—A person who was neither an agricultural tenant nor a village handicraftsman was found in possession of a house in the abadi which he and his predecessors in title had held for a period of considerably more than twelve years, without paying rent or acknowledging in any way the title of the zemindar to the site upon which it was built. *Held*, that such person had acquired the absolute ownership of the site. BHADDAR *v.* KHAIR-UD-DIN HUSAIN (1906)
I. L. R. 29 All. 13

3.—*Rights of zemindar in respect of house sites and grove-lands—Wajib-ul-arz—Construction of document.*—The plaintiffs purchased six plots of land consisting partly of groves and partly of land formerly the sites of houses, but since brought under cultivation, and, failing to get their names recorded as absolute owners of the plots, brought a suit virtually for a declaration of their proprietary title. It was shown in evidence that the inhabitants of the village in which the plots in suit were situated were in the habit of selling and transferring their houses. The wajib-ul-arz set forth that the occupiers of houses had this power, but all through the entries the zemindar was recognized, and it was stated that if a new house was to be built the permission of the zemindar must be obtained. The entry in the wajib-ul-arz as to groves was to the effect that isolated trees and clumps of bamboos planted by tenants might be cut by them; as to rent-free groves, if the trees should die out and the land be brought into cultivation, rent must be paid, and that if a new grove was to be planted the leave of the zemindar must be obtained. *Held*, that the inference of law derivable from the facts stated above was that the plaintiffs were not the absolute owners of the plots purchased by them. KISHAN KUNWAR *v.* FATEH CHAND (1906) . . . **I. L. R. 29 All. 203**

3. EJECTMENT.

4.—*Ejectment—Right of occupancy—Merger—Sub-lease by occupancy raiyat—Under-raiyat—Notice to quit—Bengal Tenancy Act (VIII of 1885), ss. 22, 49, 85 (1).*—Where after an occupancy raiyat had sublet his holding the plaintiff, his landlord, purchased the holding from him at a private sale: *Held*, that although by reason of such purchase the occupancy holding merged in the landlord's interest under s. 22 of the Bengal Tenancy Act, and although under the provisions of s. 85 (1) of the Act, the sub-lessee had not by reason of the sub-lease acquired any right as against the landlord,

LANDLORD AND TENANT—*continued.*

the plaintiff, having acquired the occupancy holding at a private sale, could not claim any higher right than the occupancy holder himself had and was not entitled to eject the sub-lessee without serving upon him a notice to quit under the provisions of s. 49 of the Bengal Tenancy Act. *Peary Mohan Mookerjee* v. *Badul Chandra Bagdi, I. L. R. 28 Calc. 205,* distinguished. AMIRULLAH MAHOMED *v.* NAZIR MAHOMED (1905).
I. L. R. 34 Calc. 104

5.—*Ejectment—Res judicata—Denial of landlord's title—Dismissal of previous suit for rent, on denial of relationship of landlord and tenant.*—In a previous suit brought by the plaintiff against the defendant for rent, the latter denied the existence of the relationship of landlord and tenant. The suit was dismissed on the ground that the defendant was not the plaintiff's tenant. Plaintiff now sued to eject the defendant: *Held,* that having regard to the decision in the previous suit, the plaintiff was entitled to treat the defendant as trespasser and to sue him for ejectment. *Nilmadhab Bose* v. *Ananta Ram Bagdi, 2 C. W. N. 755; Fayj Dhali* v. *Aftabuddin Sirdar, 6 C. W. N. 575,* and *Ramgati Mohurer* v. *Pran Hari Seal, 3 C. L. J. 201,* followed. *Srimati Mallika Dassi* v. *Makham Lal Chowdhry, 9 C. W. N. 928,* referred to. KHATER MISTRI *v.* SADRUDDI KHAN (1907) . **I. L. R. 34 Calc. 922**

6.—*Ejectment—Notice to quit—Tenant-at-will—Tenant from year to year—Revenue sale—Record of rights, correctness of.*—In a suit by an auction purchaser for ejectment of the defendant in possession of land sold for arrears of revenue, if the defendant be a trespasser the question of giving him notice to quit does not arise. But if he be a yearly tenant, he would be entitled to a reasonable notice. If he, however, be a tenant of inferior status, a verbal demand for possession of the land might be sufficient. *Sulatu Dass* v. *Jadu Nath Dass, 8 C. W. N. 774,* referred to. *Ram Narain Sahu* v. *Maangru Urao, 4 C. W. N. 792,* distinguished. A mere request by the plaintiff to the defendant to give up possession of the land in question and to pay the produce of the land, or price thereof, during his occupation, cannot be regarded as a demand for rent, and is not sufficient to create the relationship of landlord and tenant, which is a matter of contract. In the absence of any statutory provision or of any agreement, a verbal notice to quit, whether given by the landlord or the tenant, is sufficient, especially where the lease is verbal. DEO NANDAN PERSHAD *v.* MEGHU MAHTON (1906).
I. L. R. 34 Calc. 57

6A.—*Easements Act (V of 1882), s. 60—Landlord and tenant—Occupation of building-site in abadi—Erection of permanent building—Suit for ejectment.*—The defendants were found on the evidence to be tenants-at-will of the plaintiff of land in the abadi, the land having been allotted to their ancestors on condition of their rendering service as patwaris. The defendants had ceased to perform the duties of patwaris, but still occupied the land, and had built houses thereon of a permanent character. *Held,* on suit by the zemindar to eject the defendants, who had denied the zemindar's title, that the principles laid down in *Bani Ram* v. *Kundan Lal, I. L. R. 21 All. 496,* applied, and that there was no such conduct on the part of the zemindar as would justify the inference that she had contracted that the right of tenancy, under which the defendants originally obtained possession of the land, should be changed into a permanent right of occupation; neither could the defendants pray in aid s. 60 of the Indian Easements Act, 1882. *Held,* also, that the acquisition pending the suit by one of the defendants of a share in the village in which the land in suit was situate did not give the defendants any title to retain possession of the site in the abadi from which the plaintiff was suing to eject them. BUDH SINGH *v.* PARBATI (1907) . . **I. L. R. 29 All. 652**

LANDLORD AND TENANT—*continued.*

4. LAND LET FOR AGRICULTURAL PURPOSES.

7.—*Land let for agricultural purposes—Indigo factory on land let for cultivation—Bengal Tenancy Act (VIII of 1885), s. 23—Use of land consistent or not with purposes of tenancy—Second appeal, power in, to deal with findings as to whether erection of building impairs value of land or renders it unfit for cultivation.*—An occupancy tenant can under s. 23 of the Bengal Tenancy Act (VIII of 1885) "use the land in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy." In a suit for an injunction to restrain the building of an indigo factory on land let for agricultural purposes generally: *Held,* that the question whether such a building conforms to the restrictions in s. 23 must be considered with reference to the circumstances of each individual case, the size of the holding and of the area withdrawn from actual cultivation by the erection of the building, and the effect of such withdrawal upon the fitness of the holding, as a whole, for profitable cultivation. In this case, the District Judge (reversing the decision of the Subordinate Judge) found that the erection of the building did not impair the value of the land, and was in conformity with the purposes for which an agricultural holding is let, and dismissed the suit: *Held,* that the High Court was not justified, on second appeal, in overruling those findings and laying down a broad rule to the contrary without any regard to the above consideration. HARI MOHAN MISSER *v.* SURENDRA NARAYAN SINGH (1907). **I. L. R. 34 Calc. 718; L. R. 34 I. A. 133**

5. LEASE.

8.—*When patta once tendered and accepted, landlord cannot tender a second patta and enforce the terms of such second patta.*—When a patta has been tendered by the landlord and the tenant accepting such patta has executed a muchilika, the

result is an agreement binding on the parties for the period to which the instruments relate, so long as they are in force; and the landlord cannot during such period tender a second patta and proceed for the rent claimed to be due under such second patta. *Krishna Doss Bala Mukanda Doss* v. *Guruva Reddi, 9 M. L. J. 183,* distinguished. *Arunachallum Chetti* v. *Ganapathi Aiyya, I. L. R. 28 Mad. 379,* distinguished. LAKSHMINARAYANA REDDI *v.* GURUSAWMI UDAYAN (1907).

I. L. R. 30 Mad. 253

9.—*Rent suits—Objection to terms of patta not taken in previous summary suit cannot be taken in suits for subsequent year.*—Where the tenant in a summary suit brought against him to enforce acceptance of patta, does not object to some stipulations in the patta, and the judgment directs him to accept a patta containing such stipulations such judgment is a bar to the tenant setting up the same objections in a suit to enforce patta for a subsequent year. *Venkatchallapati* v. *Krishna, I. L. R. 13 Mad. 287,* followed. Payments of a voluntary nature cannot be included in the patta unless they constitute a charge on the land or are payable with rent according to established law or usage. SELLAPPA CHETTYAR *v.* A. VELAYUTHA TEVAN (1907) . . **I. L. R. 30 Mad. 498**

10.—*Landlord and tenant—Ejectment—Notice to quit—Annual tenancy created before the Transfer of Property Act—Bengali Calendar, six months' notice under, if sufficient—Transfer of Property Act (IV of 1882), ss. 106, 107—Unregistered lease, not for agricultural or manufacturing purpose—Monthly tenancy though rent annual.*—In the case of a tenancy not governed by the Transfer of Property Act, a six-months' notice calculated according to the Bengali Calendar was held to be sufficient to terminate the tenancy, the tenancy appearing to have been regulated according to the Bengali year. When a tenant holds under a lease which is not written or registered and is governed by the Transfer of Property Act, the land was not let out for a manufacturing or agricultural purpose, the tenancy must be taken to be a monthly one terminable by 15 days' notice, even though the rent appears to have been payable annually. DEBENDRA NATH BHOWMIK *v.* SYAMA PROSANNA BHOWMIK (1906). **11 C. W. N. 1124**

6. PERMANENT TENURE.

11.—*Permanent or precarious tenure—Presumption as to permanent tenure—Unchanged rent—Transfers of tenure—Recognition by landlord of transfers—Deeds of sale, construction of—Receipts for rent not expressly describing transferee as tenant of holding.*—In a suit for ejectment on the ground that the defendant was a mere tenant-at-will, it appeared that the tenure had been in existence for about 80 years; that the rent had never been enhanced though the value of the holding as measured by its sale-price had greatly increased; that it had again and again been sold by kobalas purporting to convey an absolute interest; that it had passed by will; and that the new tenants had been recognized by the landlords after such devolutions. *Held,* that the inference was that it was a permanent tenure. On the construction of the kobalas: *Held,* that the insertion therein of a stipulation that the transferee should take a new patta in his own name did not create a new tenure. *Upendra Krishna Mondal* v. *Ismail Khan Mahomed, I. L. R. 32 Calc. 41; Nilratan Mondal* v. *Ismail Khan Mahomed, I. L. R. 32 Calc. 51,* and *Ramchunder Dutt* v. *Jughes Chunder Dutt, 12 B. L. R. 229,* followed. Receipts for rent, though not expressly describing the transferee of the tenure as tenant of the holding, stated that the rent paid was the rent of the tenure, and the person paying was the occupier of it, and was paying on her own account. *Held,* that there was a sufficient recognition of the transferee as tenant. NABA KUMARI DEBI *v.* BEHARI LAL SEN (1907).

I. L. R. 34 Calc. 902; L. R. 34 I. A., 160

7. RENT.

12.—*Suspension of rent—Dispossession by lessee of landlord.*—A lessee, who may have lost possession of a portion of the lands covered by his lease, is not entitled to suspend the payment of rent, if the dispossession has been effected not by the landlord, but by other lessees under him. *Dhunput Singh* v. *Mahomed Kazim Ispahain, I. L. R. 24 Calc. 296,* and *Harro Kumari Chowdhrani* v. *Purna Chandra Sarbogya, I. L. R. 28 Calc. 188,* referred to. KALI PRASANNA KHASNABISH *v.* MATHURA NATH SEN (1907).

I. L. R. 34 Calc. 191

13.—*Suit for rent—Relationship of landlord and tenant must be shown to arise out of contract or privity of estate.*—Before a plaintiff can succeed in a suit to recover rent, he must establish relationship of landlord and tenant existing between himself and the defendant and resting either on contract or privity of estate. MANJAPPA *v.* VENKATESH (1906). . . . **I. L. R. 31 Bom. 159**

14.—*Mortgage of tenures—Decree for rent—Sale of mortgaged tenures—Incumbrances, annulment of—Sale of several tenures free of incumbrance—Bengal Tenancy Act (VIII of 1885), Ch. XIV, s. 167.*—A landlord having the same tenant holding different tenures may institute one suit for the rents of all the tenures, but having obtained a decree in such a suit, cannot cause the sale of all the tenures together free of incumbrances under the provisions of Ch. XIV of the Bengal Tenancy Act. In order to take advantage of special provisions relating to sales for arrears of rent, the landlord must cause the sale of each holding or tenure separately after having obtained a decree as regards the rent of such tenure or holding. HRIDAYNATH DAS CHOWDHRY *v.* KRISHNA PRASAD SIRCAR (1907) . . . . **I. L. R. 34 Calc. 298**

LANDLORD AND TENANT—*continued.*

15.—*Suit for rent by co-sharer landlord against some of several joint tenants—Limitation—Maintainability.*—Art. 2 (*b*) of Sch. III of the Bengal Tenancy Act applies to a suit for rent by a co-sharer landlord. A suit for rent against some of several joint tenants is maintainable as joint tenants are jointly and severally liable. JOGENDRA NATH ROY *v.* NOGENDRA NARAIN NANDI (1907). **11 C. W. N. 1026**

8. RIGHT OF OCCUPANCY.

16.—*Occupancy right, nature of—Raiyat with occupancy right has no right to cut fruit trees.*—Raiyats with rights of occupancy possess in their lands a heritable and alienable interest of a permanent character, but not the sole interest. The landlord is interested in maintaining the saleability of the holding, and in protecting such interest he is entitled to restrain the raiyat from cutting fruit-bearing trees. *Rangayya Appa Rao* v. *Kadiyala Rathnam, I. L. R. 13 Mad. 249,* followed. BODDA GODDEPPA *v.* THE MAHARAJA OF VIZIANAGRAM (1906) . . . . **I. L. R. 30 Mad. 155**

9. TRANSFER BY TENANT.

17.—*Transfer by a tenant without consent of the landlord—Non-transferable right—right of occupancy—Abandonment.*—Where a person having a non-transferable right of occupancy, transferred such right to a third party, and obtaining a sub-lease from the purchaser remained in possession of the land, but repudiated his relation as tenant to the landlord, and sought to re-occupy the land not as his (landlord's) tenant, but as the under-tenant of a person who was not a tenant and had no legal connection with the land:—*Held,* that such a person is not entitled to hold the land as against the landlord. *Madar Mondal* v. *Mahima Chandra Mazumdar, I. L. R. 33 Calc. 531,* distinguished. RAJANI KANTO BISWAS *v.* EKKOWRI DAS (1907). **I. L. R. 34 Calc. 689**

18.—*Transfer—Bengal Tenancy Act (VIII of 1885), ss. 17, 88, 161—Permanent raiyati holding—Sale of portion of holding—Landlord aware of sale, though transferee not recorded in his sherista—Sub-division of holding—Decree against recorded tenant, effect of—Purchase of part of tenure if an incumbrance.*—When raiyats having permanent interest in a holding sold a portion of it and the transferees again sold a portion of their purchased interest to one *R*, and *R* obtained settlement from the landlord: *Held,* that although the transferees took no steps to get their names registered in the landlord's *sherista* and had paid no rent since their purchase, inasmuch as the landlord had notice of the purchase, under s. 17, Bengal Tenancy Act, he was bound to bring a suit against the transferrers and the transferees jointly. A sale of the holding in execution of a decree for rent obtained against the transferrers only did not therefore affect the transferees' interest in the holding. The landlord was bound to recognise the transfer though in the absence of his written consent as required by s. 88 of the Bengal Tenancy Act, he was not bound to recognise the sub-division effected by the transfer. The interest of the transferees was not an incumbrance which could be avoided by a purchaser at a rent sale. BAISTAB CHARAN CHOWDHURY *v.* AKHIL CHANDRA CHOWDHURY (1906). **11 C. W. N. 217**

10. MISCELLANEOUS.

19.—*Landlord and tenant—Decree for consolidated rent of several tenures, whether bind tenures—Decree whether obtained against sole recorded tenant—Proof—Onus—Right of auction purchaser of share in tenure—Chota Nagpur Landlord and Tenant Procedure Act (Beng. I. of 1879), ss. 123 and 125.*—A decree for the consolidated rent of several tenures held by the same tenants does not bind the tenures or any of them. Where a tenure was sought to be sold in execution of a decree for rent obtained against one of the tenants, after the shares of the other tenants had passed by auction sale to a stranger, on the allegation that the tenant against whom it had been obtained was the sole recorded tenant of the landlord: *Held,* that whether this was so or not was a matter specially within the knowledge of the landlord and the onus was on him to prove it. BAIKANTA NATH ROY *v.* DEBENDRA NATH SAHI (1906) . . . . **11 C. W. N. 676**

20.—*Inamdar, tenant under—No presumption that tenant has permanent occupancy right.*—The position of inamdars differs materially from that of zemindars and the presumption that persons becoming tenants of zemindars after the permanent settlement become occupancy tenants does not apply to persons who become tenants under inamdars. *Cheekati Zemindar* v. *Ranasoori Dhora, I. L. R. 23 Mad. 318,* referred to. MARAPU THARALU *v.* TELUKULA NEELAKANTA BEHARA (1907). **I. L. R. 30 Mad. 502**

21.—*Road and Public Works Cess Act (IX of 1880, B. C.) s. 4 Explanation, and s. 20 (a) and (b)—Road-cess return—Conversion of nakdi into bhaoli rent shortly before return submitted—Annual value how to be assessed—Alternation in area of holdings and tenures by reason of exchange amongst tenants, if must be specified in return.*—The plaintiff who had a share in a mouzah had his share separated by partition in 1300, F. S. Subsequently to the partition, the defendants who were tenants and were paying *nakdi* rent agreed to pay *bhaoli* rent from the beginning of 1302, F. S. It also appears that after the partition the tenants of the whole estate agreed amongst themselves to respectively hold lands in that share only in which they held homestead lands and in this way an exchange of lands took place between them. On the 4th of Assin 1302, F. S., the plaintiffs submitted a road-

LANDLORD AND TENANT—*continued.*

cess return in respect of their separated share, in which the *nakdi* rents which prevailed up to the end of 1301, F. S., and not the recently settled *bhaoli* rents were mentioned. Further, the statement of land, holding on tenure given in the return, corresponded with the state of things as they existed prior to the exchange effected between the tenants. Plaintiffs having sued the defendants for *bhaoli* rents calculated on lands held by them since the exchange, the defendants objected that the provisions of cls. (*a*) and (*b*) of s. 20 of the Road and Public Works Cess Act had not been complied with. *Held*, that as there was no enhancement of rent, but only conversion of *nakdi* into *bhaoli* rent, and as no calculation of annual value based on the average money value of three years' *bhaoli* rent as contemplated in the explanation to s. 4 of the Act was possible in this case, the plaintiffs had substantially complied with the provisions of s. 20, cl. (*b*) of the Act. That cl. (*a*) of the section had also been complied with inasmuch as all the lands for which rent was payable were mentioned in the return, although it appeared that by reason of the exchange of lands amongst the tenants, the land for the rent of which each of the defendants was sued in this case was greater than that shown in the road-cess return. GOURI SABAN MAHTO *v.* MOULVI MAHOMED LATIF (1906).

11 C. W. N. 211

22.—*Rent—Solenama—Compromise—Civil Procedure Code (Act XIV of 1882), s. 375—Registration Act (III of 1877)—Unregistered solenama.*—Plaintiffs had sued the defendants for damages for wrongfully taking fish from a *jalkar*; a *solenama* was filed in the suit in 1893 by which the plaintiffs agreed to take a smaller sum than the amount claimed as damages and the defendants agreed to take a permanent lease of the *jalkar* from the plaintiffs at a yearly rental of R413 and it was further provided that so long as the contract was not completed the defendants would be at liberty to use the *jalkar* and would pay rent from the year 1300 B. S. A decree was made on the basis of the compromise. *Held*, that although the terms of the *solenama* regarding the taking of the lease could not have been enforced in execution of the decree, they must be held to be binding on the defendants as an agreement, that no objection could be taken to the admissibility of the *solenama* on the ground of its being unregistered; and that the defendants, having been in occupation of the *jalkar* after 1893, were bound to pay rent to the plaintiffs under the terms of the *solenama*. JASIMUDDIN BISWAS *v.* BHUBAN JELINI (1907) . . I. L. R. 34 Calc. 456

23.—*South Canara, tenant in—No presumption that tenancy is chalgeni or mulgeni—Immemorial possession on uniform rent, presumptive evidence of mulgeni.*—There is no presumption in South Canara that a tenancy is either *chalgeni* or *mulgeni*. Immemorial possession on a uniform rent will raise a presumption in favour of *mulgeni* tenure and the burden will be on the other party to prove that

LANDLORD AND TENANT—*concluded.*

the tenant was holding on *chalgeni* tenure. *Boggu Shetti* v. *Raghuramanaik, Second appeals Nos. 137 and 192 of 1879*, referred to. KITTU HEGADTHI *v.* CHANNAMMA SHETTATHI (1904).

I. L. R. 30 Mad. 528

24.—*Tree—Land-holder's and tenant's rights as to trees on tenant's holding.—Held*, that in the absence of special agreement a tenant has, as against his landlord, a right to insist that so long as his tenancy continues the landlord shall not cut down trees standing on the tenant's holding. *Deokinandan* v. *Dhian Singh, I. L. R. 8 All. 467*; *Kousalia* v. *Gulab Kunwar, I. L. R. 21 All. 297*, and *Ruttonji Edulji Shet* v. *The Collector of Thana, 11 Moo. I. A. 295*, referred to. BADAM *v.* GANGA DEI (1907).

I. L. R. 29 All. 484

LAND REGISTRATION.

—*Refusal to register—Suit for declaration of title—Limitation Act, Sch. II, Art. 120.*—An order under the Land Registration Act refusing to register an applicant's name does not in law amount to a dispossession of the applicant and the putting in possession of the party upon whose objection the application was refused. When the party whose application for the registration of his name was refused continued in actual possession no suit for the recovery of possession within Art. 144 of Sch. II of the Limitation Act would lie at his instance, and a suit to have his title to the land declared would be governed by Art. 120 of Sch. II of the Limitation Act. *Mohabharat Shaha* v. *Abdul Hamid Khan, 1 C. L. J. 73*, followed. SHAMANUND DAS *v.* RAJNARAIN DAS (1906) . . . . . 11 C. W. N. 186

LAND REGISTRATION ACT (BENG. VII OF 1876).

——s. 78—

—*Suit for rent by assignee from unregistered proprietor—Maintainability.*—S. 78 of the Land Registration Act (VII B. C. of 1876) has no application to the case of a person to whom rent has been assigned by a proprietor whose name has not been registered under the Act. SERAPAT HOSSEIN *v.* TARINI PROSAD DOBEY (1906).

11 C. W. N. 141

——s. 88—

See BOARD OF REVENUE, RULES OF.

11 C. W. N. 470

LAND REVENUE CODE (BOM. ACT V OF 1879).

——s. 37—

—*Khots—Khots of the whole village—Alluvions—Right of the Khot to the alluvion.*—The Khots of the village of Bele Burdruk in the Ratna-

LAND REVENUE CODE (BOM. ACT V OF 1879)—*concluded.*

giri District asserted a claim to occupy and cultivate lands left dry in the river bed as far as the middle of the bed opposite their khoti village. The lands in question were treated for nearly a hundred years as part of the village. *Held,* that plaintiffs were entitled to the right claimed and that s. 37 of the Land Revenue Code (Bombay Act V of 1879) presented no bar to the same. The construction to be placed on the words "are hereby declared" in a statute discussed. SECRETARY OF STATE *v.* WASUDEO (1907) . **I. L. R. 31 Bom. 456**

——s. 83—

—Bhagdari and Narwadari Act (Bom. Act V of 1862), s. 3—Fruit-yielding trees standing on a portion of a Bhag—Permanent tenancy—Annual tenancy—Construction—Obstruction to tenant in the enjoyment of trees—Permanent injunction.—S. 83 of the Land Revenue Code (Bom. V of 1879) creates no new rights; it simply insists on the Courts adopting a better method of ascertaining whether in fact the right existed. NAHANCHAND *v.* MODI KEKHUSHRU (1906). **I. L. R. 31 Bom. 183**

LEASE.

See ADVERSE POSSESSION. **I. L. R. 29 All. 593**

See EJECTMENT, SUIT FOR. **11 C. W. N. 661**

See LAMBARDAR AND CO-SHARER. **I. L. R. 29 All. 20, 554**

See LANDLORD AND TENANT.

See RIGHT OF OCCUPANCY. **11 C. W. N. 397**

——by Hindu Widow—

See HINDU LAW—WIDOW. **I. L. R. 34 Calc. 329**

1.—*Transfer of Property Act, s. 108 (j)—Assignment of lease—Assignee of lease, liability of, to lessor—Liable for rent from date of assignment and not from date of obtaining possession—Principle applies to agricultural leases.*—Under s. 108 of the Transfer of Property Act a lessee may transfer his privity of estate to an assignee, thus rendering the latter liable to the lessor on covenants running with the land, while he himself will continue liable to the lessor by reason of his privity of contract which does not pass by assignment. The liability of the assignee arises from the date of assignment and not from the date when he obtains possession. This is the law in England and there is nothing in the Transfer of Property Act to make a different rule applicable in this country. *Kunhanujam* v. *Anjelu, I. L. R. 17 Mad. 296,* referred to. Although the Transfer of Property Act does not apply to agricultural leases, there is no reason why the above rule should not be applied to them as well as to non-agricultural leases. The assignee of an agricultural lease becomes liable for the rent payable to the lessor from the date of assignment. *Kamala Nayak* v. *Ranga Rao, 1 Mad. H. C. 24,* and *Macnaghten* v. *Lalla Mewa Lall, 3 C. L. R. 285,* dissented from. MONICA KITHERIA SALDANHA *v.* SUBRAYA HEBBARA (1907). . . . **I. L. R. 30 Mad. 410**

LEASE—*continued.*

2.—*Lease—Contract in violation of the Bengal Municipal Act—Commissioners, power of, under the Bengal Municipal Act (III of 1884, B. C.), ss. 34, 37—Ultra vires—Fraud.*—S. 34 of the Bengal Municipal Act must be read along with s. 37 of the said Act. Where in a suit by the Chairman of the Municipality to set aside a permanent lease executed by the defendant it was found that the contract was sanctioned by the Commissioners at a meeting and that it involved a value exceeding Rs. 500 but that the *kabuliyat* executed on behalf of the Municipality was signed only by the Chairman, and although two of the Commissioners witnessed it they did not sign it as contracting parties, and, furthermore, it was not sealed with the seal of the Commissioners. *Held,* that the contract was not binding on the Commissioners. CHAIRMAN, SOUTH BARRACKPORE MUNICIPALITY *v.* AMULYA NATH CHATTERJEE (1907). **I. L. R. 34 Calc. 1030**

3.—*Construction of lease—Five years' term with option to lessee to hold over indefinitely on the same conditions—Nature of tenancy after expiration of term—Ejectment—Notice—Unequal bargain—Undue influence—Pleadings.*—A lease was executed for a term of five years giving the lessee the option of quitting the premises during the continuance of the term on giving a month's previous notice to quit. There was a further stipulation that the lessee would be entitled to hold and possess the premises on the conditions reserved even after the expiration of the term and so long as he desired to do so without interruption or hindrance on the part of the lessor. *Held,* on a construction of the lease, that the right to hold over did not create in the lessee the interest of a tenant from month to month from the expiration of the term of five years, and the lessor could not, after the expiration of the said term, eject the lessee by giving him notice to quit as in the case of a monthly tenancy. The lessee was entitled to hold and possess the premises all his life or until due surrender by him during his lifetime by means of a month's notice. *Vaman Shripad* v. *Maki, I. L. R. 4 Bom. 424,* followed. A doubtful grant must be construed in favour of the grantee. HIGGINS *v.* NOBIN CHUNDER SEN (1907) . . . . **11 C. W. N. 809**

4.—*Transfer of Property Act, ss. 105, 107—Lease, within the meaning of, can only be effected by written instrument signed by the lessor.*—A 'lease' as defined by s. 105 of the Transfer of Property Act, is a transfer of property, and such a transfer can only be made by the person in whom the property to be transferred is vested. The registered instrument by which a lease can be effected under s. 107 of the Transfer of Property Act must

LEASE—*concluded.*

be an instrument bearing the signature of the lessor. *Ambalavana Pandaram* v. *Vagurau, I. L. R. 19 Mad. 52*; *Seshachela Naiker* v. *Varadachariar, I. L. R. 25 Mad. 55*, distinguished. TUROF SAHIB *v.* ESUF SAHIB (1907).

I. L. R. 30 Mad. 322

5.—*Transfer of Property Act (IV of 1882), s. 106—Notice to quit—Monthly period of tenancy not necessarily reckoned from date of lease—May be calculated from different date if such was the intention of the parties.*— It is open to the parties to a lease to agree that the monthly period of a tenancy should be reckoned from a date different from that on which the lease is executed, and fifteen days' notice to the tenant expiring with the end of a month of the tenancy as so reckoned is a sufficient notice under s. 106 of the Transfer of Property Act. Where a lease is executed and the tenant enters on possession and is liable for rent from the middle of a month, but the rent is made payable, not on dates calculated from the date of such lease but at the end of the calendar month, the reasonable inference, in the absence of anything to the contrary in the instrument, is that for determining when the tenancy was to expire, the parties agreed that the monthly tenancy should coincide with the calendar month. ARUNACHELLA CHETTIAR *v.* RAMIAH NAIDU (1906) . **I. L. R. 30 Mad. 109**

LEAVE TO SUE.

See APPEAL. **I. L. R. 34 Calc. 584**

See LETTERS PATENT, CL. 12.

11 C. W. N. 663

—*Letters Patent, 1865, cl. 12—Registrar, power of, to grant such leave—Rules and Orders of the High Court—Rules 515A, 515B (4)—Ultra vires—Delegation of power by High Court—Civil Procedure Code (Act XIV of 1882), ss. 637, 652—High Court, Constitution and jurisdiction of—Limitation Act (XV of 1877), s. 14.*—The order granting leave to sue under cl. 12 of the Letters Patent is a judicial and not merely a ministerial act; the leave has to be granted by a Judge of the Court, and it is not competent to the Court to delegate this function to one of its officers. *Hadjee Ismail Hadjee Hubeeb* v. *Hadjee Mahomed Hadjee Joosub, 13 B. L. R. 91*; *DeSouza* v. *Coles, 3 Mad. H. C. 384*; *Mudelly* v. *Mudelly, 8 Mad. H. C. 210*, *Rajam Chetti* v. *Seshayya, I. L. R. 18 Mad. 236*; *Rampurtab Samruthroy*, v. *Premsukh Chandamal, I. L. R. 15 Bom. 93*, referred to. Rule 515A of the Rules and Orders of the High Court, in so far as it authorises the Registrar or Master to grant leave under cl. 12 of the Letters Patent, is *ultra vires*. LALITESHWAR SINGH *v.* RAMESHWAR SINGH (1907).

I. L. R. 34 Calc. 619

LEGAL CRUELTY.

See RESTITUTION OF CONJUGAL RIGHTS.

LEGAL PRACTITIONERS' ACT (XVIII OF 1879).

——ss. 13, 14—

1.—*Jurisdiction—Inquiry by Court subordinate to the High Court into conduct of pleader practising before it.*—*Held*, that the words "any such misconduct as aforesaid" as used in s. 14 of the Legal Practitioners' Act, 1879, relate to all the cases set out in s. 13 of the Act. The authority therefore to inquire into a matter falling within the purview of s. 13, cl. (*f*), of the Act is not confined to the High Court, but may be exercised by a subordinate Court before which the pleader or mukhtar whose conduct is called in question may be practising. *In the matter of Purna Chunder Pal, Mukhtar, I. L. R. 27 Calc. 1023*; *In the matter of Southekal Krishna Rao, I. L. R. 15 Calc. 152*, and *In the matter of a Pleader, I. L. R. 26 Mad. 448*, referred to. MUHAMMAD ABDUL HAI, *In the matter of the petition of* (1906).

I. L. R. 29 All. 61

——s. 28—

2.—*Pleader—Agreement to allow legal fees to be set off against money advanced to a pleader by a client.*—A client advanced certain money to a pleader who subsequently appeared for the lender in various cases. On suit by the lender to recover his loan, the pleader set up an agreement entitling him to set off against the money borrowed his fees for professional services. *Held*, that the pleader was entitled to a set-off in the shape of reasonable remuneration for services actually rendered, although there was no such agreement as required by the Legal Practitioners' Act, s. 28. *Raghunath Saran Singh* v. *Sri Ram, I. L. R. 28 All. 764*, and *Razi-ud-din* v. *Karim Bakhsh, I. L. R. 12 All. 169*, referred to. CHHANNU LAL *v.* ASHARFI LAL (1907).

I. L. R. 29 All. 649

LEGAL REPRESENTATIVES.

See APPEAL, ABATEMENT OF.

11 C. W. N. 504

——application to bring in—

See HINDU LAW.

I. L. R. 34 Calc. 642

See LIMITATION.

I. L. R. 34 Calc. 1020

—*Application for substitution of names—Civil Procedure Code (Act XIV of 1882), s. 362—Limitation Act (XV of 1877), Sch. II, Art. 178.*— During the pendency of a defendant's appeal, one of the plaintiffs, respondents, died, and his rights and liabilities in respect of the disputed properties vested by survivorship in accordance with the Mitakshara law in the remaining plaintiffs, respondents. *Held*, that an application by the appellant to have the surviving plaintiffs, respondents, noted as the legal representatives of the deceased comes

LEGAL REPRESENTATIVES—*concluded.*

within s. 362 of the Civil Procedure Code and is governed by Art. 178, Sch. II of the Limitation Act. S. 362, Civil Procedure Code, is not limited in its application to cases where the right to sue (or appeal) survives against the surviving defendants (or respondents) not as the legal representatives of the deceased, but by reason of a right vested in them antecedent to the suit. SHAMANUND DAS *v.* RAJNARAIN DAS (1906) . . **11 C. W. N. 186**

LEGAL TENDER.

—*Indian Coinage and Paper Currency Act (XXII of 1899), ss. 2, 3—Tender by cheque—Irregular tender, waiver of—Valid tender, if stops interest—Bengal Tenancy Act (VIII of 1885), s. 61—Contract Act (IX of 1872), s. 38.*—A legal tender as defined by the Indian Coinage Act, the Indian Paper Currency Act, and the Indian Coinage and Paper Currency Act does not include a tender by cheque. But when a tender is actually made, but in a currency different from that required by law, *viz.*, by a cheque, the objection to the form of the tender may be expressly or impliedly waived by the creditor, and he will be deemed to have waived the objection, if he rejects the tender on some ground or other, without making any objection of the legality of the tender in point of quality. *Polglass* v. *Oliver, 2 Cr. and J. Cr. 15 : 37 R. R. 625*; *Jones* v. *Arthur, 8 Dowling 442 : 59 R. R. 833 ; Ball* v. *Stanley, 5 Yerger 599 ; Caine* v. *Coulton, 1 H. and C. 764 ; Ward* v. *Smith, 7 Wallace 447*, and *Bolye Chund Singh* v. *Moulard, 1. L. R. 4 Calc. 572*, referred to. A valid tender, which has been improperly refused, but which is kept good, though it does not extinguish the indebtedness, stops the running of interest after the tender. *Raja Ransgit Singha* v. *Bhagabutty Charan Roy, 7 C. W. N. 720*, distinguished. *Gyles* v. *Hall, 2 P. Wms. 378*; *Wallace* v. *MacConnell, 13 Peters 136 ; Bissell* v. *Hayward, 6 Otto 580 ;* and *Dikson* v. *Clark, 5 C. B. 365 ; 75 R. R. 747*, referred to. Where, therefore, a tenant wrote a letter to one of the sons of the deceased landlord offering to pay the whole amount of the rent due, by a cheque or in cash, provided a receipt signed by all the brothers or by a person duly authorised to sign on their behalf was given, and subsequently a cheque was drawn in favour of all the four brothers and sent to the eldest one with a request that a proper receipt might be sent for the amount, but the cheque was returned as there was a serious dispute amongst the brothers and they were not in a position to grant a joint receipt, and repeated attempts by the tenant to pay the money having failed, she deposited the amount in Court under s. 61 of the Bengal Tenancy Act. *Held*, that as there was a valid tender in the case, which was improperly refused, interest ceased to run from the date of the tender. JAGAT TARINI DASI *v.* NABA GOPAL CHAKI (1907).
I. L. R. 34 Calc. 305

LESSEE.

See REDEMPTION, SUIT FOR.
I. L. R. 29 All. 679

LESSOR AND LESSEE.

See LEASE, CONSTRUCTION OF.
11 C. W. N. 809

LETTERS OF ADMINISTRATION.

—*Grant for the use and benefit of minor—Minor wife—Husband, grant to—Guardian—Probate and Administration Act (V of 1881), s. 33—Practice.*—Where a husband applied under s. 33 for the Probate and Administration Act for letters of administration for the use and benefit of his minor wife : *Held*, that such application was not maintainable until the applicant had been appointed guardian of his minor wife. NIROJINI DEBI, *In the goods of* (1907) . **I. L. R. 34 Calc. 706**

LETTERS PATENT, 1865.

See LEAVE TO SUE.

——cls. 7, 8—

See ADVOCATE. . **I. L. R. 29 All. 95**

——cl. 12—

1.—*Leave to sue—Rule 515A of the High Court—Ultra vires.*—Rule 515A of the Rules and Order of the High Court, in so far as it authorises the Registrar or Master to grant leave under cl. 12 of the Letters Patent, is *ultra vires*. LALITESHWAR SINGH *v.* RAMESHWAR SINGH (1907).
I. L. R. 34 Calc. 619

2.—*Letters Patent, cl. 12—Considerations of convenience may be taken into account in granting or refusing leave when part of the cause of action arises within jurisdiction.*—The jurisdiction conferred by cl. 12 of the Letters Patent in respect of applications for leave to sue when part of the cause of action arises within jurisdiction ought to be exercised with great caution when the defendant is an absent foreigner. *Societe Generale De Paris* v. *Dreyfus Brothers, 29 Ch. D. 239, 243*, referred to. Courts in this country are not precluded from taking the question of convenience into consideration in dealing with applications under cl. 12 for leave to sue. Part of the cause of action cannot be held to arise at a place, where payment was not originally contracted for, merely because after performance of the contract and without any consideration a promise is made to pay at such place. SESHAGIRI ROW *v.* NAWAB ASKUR JUNG AFTAL DOWLAH MUSHRAL MULK (1907).
I. L. R. 30 Mad. 438

3.—*Letters Patent, cl. 12—Rules and Orders of the High Court—Rules 515A and 515B—Grant of leave under cl. 12 of the Charter by Registrar or Master, if ultra vires.*—Rule 515A so far as it

LETTERS PATENT, 1865—*concluded.*

authorises the granting of leave under cl. 12 of the Charter by the Master and Registrar is *ultra vires*. BRIJ COOMARY *v.* ALMA CHAND (1907).
11 C. W. N. 663

——cl. 15—

1.—*Letters Patent, cl. 15—'Judgment'—Order shutting out evidence is a judgment and appealable as such.*—An order refusing to issue a commission for the examination of witnesses, whose personal attendance cannot be enforced, affects the right to produce evidence relevant to the issues in the suit and is a judgment within the meaning of cl. 15 of the Letters Patent and appealable as such. That the Judge has a discretionary power does not affect the appealability of the order. MARUTHAMUTHU PILLAI *v.* KRISHNAMACHARIAR (1906).
I. L. R. 30 Mad. 143

2.—*Letters Patent, cl. 15—"Judgment" what is.*—An order of a single Judge rejecting a revision petition presented under s. 622 of the Civil Procedure Code on the ground that the objection taken therein is unfounded is a 'judgment' within the meaning of cl. 15 of the Letters Patent, and appealable as such. RAMA AYYAR *v.* VENKATACHELLA PADAYACHI (1907) . . **I. L. R. 30 Mad. 311**

LIBEL.

See DEFAMATION.

——on the Judges—

See ADVOCATE . **I. L. R. 29 All. 95; L. R. 34 I. A. 41**

——suit for—

—Suit for libel by several persons jointly—Misjoinder of plaintiff's and causes of action—Plaint, amendment of—Election of plaintiff—Civil Procedure Code (Act XIV of 1882), ss. 26 and 53.—Where six members of the Calcutta Police Force jointly sued the editor and proprietor of a newspaper for damages in respect of a libel alleged to contain reflections upon their conduct in a criminal case:—*Held*, that there was not one and the same cause of action appertaining to all the plaintiffs, though the injury was caused by one act of the defendant, but that each plaintiff had a separate cause of action in respect of his own reputation; and that having regard to s. 26, Civil Procedure Code, there had been a misjoinder of plaintiffs and causes of action, and that the suit as framed could not proceed. *Held*, further, that there was nothing in the Civil Procedure Code or Rules of the Court to necessitate a dismissal of the suit; that the plaintiffs might be put to their election which one of them should proceed with the suit; and that after such election the plaint might be amended by striking out the other plaintiffs and making other consequential alterations. *Haramoni Dassi* v. *Hari Churn Chowdhry, I. L. R. 22 Calc. 833*, referred to. *Booth* v. *Briscoe, L. R. 2 Q. B. D. 496*, distinguished. *Smurthwaite* v. *Hannay*, [*1894*] *A. C. 494; P. & O. Co.* v. *Tsune Kijima*, [*1895*] *A. C. 661; Ali Serang* v. *Beadon, I. L. R. 11 Calc. 524; Varajlal Bhaishanker* v. *Ramdat Harikrishna, I. L. R. 26 Bom. 259*, and *Sandes* v. *Wildsmith* [*1893*] *1 Q. B. 771*, followed. ALDRIDGE *v.* BARROW (1907) . . . **I. L. R. 34 Calc. 662**

LIBEL—*concluded.*

LICENSE.

——necessity of—

See SWORD-STICK.
I. L. R. 34 Calc. 749

—Calcutta Municipal Act (B. C. III of 1899), ss. 198, 466 and Sch. II, Rules (1), (2) and (7)—Liability of lime-trade—Licensee to take out separate license to store lime.—A lime-trader, who has obtained a license under s. 198 and Rules (1) and (2) of Sch. II of the Calcutta Municipal Act in respect of his lime business, is not exempted by Rule (7) of the Schedule from taking out a separate license to store lime as required by s. 466 (1) of the Act. BIPIN BEHARI GHOSE *v.* CORPORATION OF CALCUTTA (1907) . . **I. L. R. 34 Calc. 913**

LIEN.

——of vendor—

—Transfer of Property Act (IV of 1882), s. 55—Vendor, lien of unpaid—Lien is not possessory but only a charge—Adverse possession.—The lien of the unpaid vendor of land under s. 55 of the Transfer of Property Act is non-possessory. He has only a right to retain the title-deeds and to a charge for the unpaid purchase money, but he cannot retain possession of the property sold against the vendee. VELAYUTHA CHETTY *v.* GOVINDASAWMI NAIKEN (1907) . . . . **I. L. R. 30 Mad. 524**

LIMITATION.

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1. LAW OF LIMITATION . .	235
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See CALCUTTA MUNICIPAL ACT (BENGAL III OF 1899).
I. L. R. 34 Calc. 341

See Civil PROCEDURE CODE, ss. 368, 582, 587 . . **I. L. R. 29 All. 535**

See COURT-FEES, INSUFFICIENCY OF.
I. L. R. 29 All. 749

See EJECTMENT, SUIT FOR.
11 C. W. N. 661

See EXECUTION OF DECREE.
I. L. R. 30 Mad. 537

See EX-PARTE DECREE.
I. L. R. 29 All. 623

LIMITATION—*continued.*

See HINDU LAW—ALIENATION.
I. L. R. 34 Calc. 184

See HINDU LAW—JOINT FAMILY.
I. L. R. 29 All. 544

See LIMITATION ACT.

See PARTIES. . 11 C. W. N. 350

See PROSECUTION.
I. L. R. 34 Calc. 909

See RECORD OF RIGHTS, OBJECTION TO.
11 C. W. N. 48

See SECOND APPEAL.
I. L. R. 30 Mad. 1

1. LAW OF LIMITATION.

1.—*Limitation—Resistance to execution—Investigation into the matters of resistance—Dismissal for default—Limitation Act (XV of 1877), Sch. II, Art. 11—Civil Procedure Code (Act XIV of 1882), s. 335.*—An application under s. 335 of the Code of Civil Procedure was dismissed for default on the petitioner applying to withdraw his petition for want of evidence, the opposite party being present. In a suit by the petitioner for possession of the property, the subject of the above application, the defendants pleaded limitation under Art. 11 of Sch. II to the Limitation Act: *Held*, that there was no enquiry within the meaning of s. 335 and that consequently the order made was not conclusive, and the suit was not barred by the special limitation of one year. It is a condition precedent to passing an order under s. 335, so as to make it conclusive unless a suit is brought within one year, that the Court shall enquire into the matters of resistance, etc. SARAT CHANDRA BISU *v.* TARINI PRASAD PAL CHOWDHRY (1907).
I. L. R. 34 Calc. 491

2.—*Limitation Act (XV of 1877), s. 20—Part payment—Mortgage-debt—Equity of redemption, transfer of—Part payment by mortgagor after transfer—Extension of period as against transferee.*— Payment of a part of the mortgage-debt by the mortgagor, and appearing in his handwriting, will give a fresh start of limitation to the mortgagee even as against a person who had purchased a portion of the mortgaged property prior to such payment. *Krishna Chandra Saha* v. *Bhairab Chandra Saha, 9 C. W. N. 868: I. L. R. 32 Calc. 1077*, followed. *Newbould* v. *Smith, 33 Ch. D. 127*, referred to. DOMI LAL SAHU *v.* ROSHAN DUBEY (1906) . . . 11 C. W. N. 107

3.—*Limitation Act (XV of 1877), s. 7; Sch. II, Arts. 178, 179—Execution of decree—Limitation—Minority.*—On the 11th of May 1886 a decree under s. 88 of the Transfer of Property Act, 1882, was passed in favour of one *S. L.* In June 1888, *S. L.* died leaving him surviving three sons, all minors. On the 30th of April 1889, these three sons, still minors, made an application for an order absolute under s. 89 of the Act. Nothing further was done towards execution of the decree until the 1st of October 1904, when the three sons, one being still a minor, again applied for an order absolute for the sale of the mortgaged property. *Held*, that the application on the 1st October 1904 was not barred by limitation. *Zamir Hasan* v. *Sundar, I. L. R. 22 All. 199*, followed. *Bhagat Bihari Lal* v. *Ram Nath, I. L. R. 27 All. 704*, and *Baldeo* v. *Ibn Haidar, I. L. R. 27 All. 625*, referred to by RICHARDS, *J.* SRI RAM *v.* HET RAM (1907).
I. L. R. 29 All. 279

4.—*Limitation—Hindu Law—Widow—Alienation—Suit by reversioner to set aside the alienation—Limitation Act (XV of 1877), Sch. II, Art. 91.*—The plaintiff sued in 1904, as a reversioner, to recover possession of property from the defendant to whom it had been given by way of gift in 1894 by the widow of a preceding owner. It was found by both the lower Courts that the alienation was not justified by any necessity recognized by Hindu Law. The defendant pleaded that the suit was barred by limitation. *Held*, that it was not open to the defendant to rely on Art. 91 of the Limitation Act (XV of 1877) as a bar to the suit. *Harihar Ojha* v. *Dasarathi Misra, I. L. R. 33 Calc. 257*, followed. RAKHMABAI *v.* KESHAV RAGHUNATH (1906).
I. L. R. 31 Bom. 1

2. QUESTION OF LIMITATION.

5.—*Limitation, plea of—Ground of limitation not taken in memorandum of appeal—Second appeal—Plea of limitation raised for the first time in second appeal—Limitation Act (XV of 1877), s. 4—Civil Procedure Code (Act XIV of 1882), s. 542—Practice.*—*Held*, by the Special Bench (WOODROFFE, *J.*, dissenting), that though an objection upon the question of limitation was not raised in the memorandum of appeal, leave should yet be given to argue it as the point arose on the face of the plaint, and no question of fact had to be enquired into to enable the Court to dispose of it, and that when the point was thus taken the Court was bound to give effect to it, the provisions of s. 4 of the Limitation Act being mandatory. *Quære*: whether s. 542 of the Code of Civil Procedure controls s. 4 of the Limitation Act. *Held*, by WOODROFFE, *J.*, that under the circumstances of the case it was a fair and proper exercise of discretion to disallow, under s. 542 of the Civil Procedure Code, the objection which had not been set out in the grounds of appeal. BALARAM *v.* MANGTA DASS (1907). I. L. R. 34 Calc. 941

3. STATUTES OF LIMITATION.

6.—*Limitation Act (XV of 1877), Arts. 118, 141—When suit is for possession, Art. 141 and not Art. 118 applies.*—Art. 118 of Sch. II of the Limitation Act applies only to declaratory suits in respect of adoption and not to suits for possession of immoveable property. The period of limitation applicable to the latter class of suits is that prescribed by Art. 141 of Sch. II of the Limitation Act. *Thakur*

LIMITATION—*continued.*

Tribhuwan Bahadur Singh v. *Raja Rameshar Bakhsh Singh, L. R. 33 I. A. 156,* followed. VELAGA MANGAMMA *v.* BANDLAMUDI VEERAYYA, (1907). . . . **I. L. R. 30 Mad. 308**

7.—*Limitation Act (XV of 1877), Sch. II, Art. 95—Fraud—Suit to recover possession of dar-patni tenure purchased benami—Fraudulent arrangement between patnidar and benamidar by which decree was obtained under which the tenure was sold to patnidar—Real purchaser's title not affected by decree or sale in execution under it.*—The plaintiff, in 1886, purchased benami the dar-patni right in a certain tenure. In 1889 the patnidar entered into a fraudulent arrangement with the benamidar, whose name was entered in the Collector's book as the holder of the dar-patni, and obtained a decree for arrears of rent under which the dar-patni was sold and purchased by the patnidar on 20th June, 1891. The plaintiff, the real purchaser and beneficial owner of the dar-patni, admittedly became aware of the fraud on or before the 29th July, 1892. In a suit brought on 25th October, 1895, against the patnidar and the benamidar to recover possession of the dar-patni:—*Held,* that the suit was not barred by the three years' period of limitation provided by Art. 95 of Sch. II of the Limitation Act (XV of 1877) for a suit to set aside the decree on the ground of fraud. On the facts the plaintiff was not estopped from denying the authority of his benamidar to deal with the tenure, and there was nothing to show that anything more than the interest of the benamidar was sold. On this point the onus was on the defendants to show that the plaintiff could not succeed without setting aside the decree, and this they had not done. There was, therefore, nothing to show that the plaintiff's title was in any way affected by the sale. ANNADA PERSHAD PANJA *v.* PRASANNAMOYI DASI (1907).
I. L. R. 34 Calc. 711; L. R. 34 I. A. 138

8.—*Limitation Act (XV of 1877), Sch. II, Arts. 178, 179—Art. 178 applies where decree-holder obliged to refund seeks to execute his decree—Period runs from the date of order for such refund.*—Where a sale in execution of a decree is set aside at the instance of the judgment-debtor and the decree-holder is ordered to refund the purchase money paid to him and the decree-holder subsequently applies to execute his decree, such application in regard to limitation is governed by Art. 178 and not 179 of Sch. II to the Limitation Act, and time begins to run against the decree-holder from the date when he is ordered to refund the purchase money, when alone his right to apply accrues. *Issuree Dassee* v. *Abdool Khalak, I. L. R. 4 Calc. 415,* and *Kalyanbhai Dipchand* v. *Ghanasham Lal Jademathji, I. L. R. 5 Bom. 29,* followed. RAMINEEDI VENKATA APPA RAO *v.* LAKKOJU CHINA AYYANNA (1906).
I. L. R. 30 Mad. 209

9.—*Limitation Act (XV of 1877), s. 7—Execution proceedings—Death of decree-holder pending stay of execution—Right of minor to revive proceedings—Limitation.*—Where a mortgagee decree-holder applied for sale of the mortgaged properties, but on objection the proceedings were stayed and before the stay order was removed the decree-holder died leaving a minor son and shortly afterwards the stay order was removed and the application for sale also was struck off. *Held,* that the minor heir of the decree-holder was entitled to the protection of s. 7 of the Limitation Act and an application for sale made on his behalf more than 3 years after was not barred by limitation. ABDUL LATIF *v.* RAJANI MOHUN ROY (1907). . **11 C. W. N. 831**

10.—*Mortgage—Personal Covenant—Registered mortgage bond—Supplemental decree—Transfer of Property Act (IV of 1882). s. 90—Limitation Act (XV of 1877), Sch. II, Arts. 116, 178.*—Art. 178, Sch. II, of the Limitation Act is limited to applications under the Code of Civil Procedure. It does not apply to an application by a mortgagee for a supplemental decree under s. 90 of the Transfer of Property Act. Where a registered mortgage contains a covenant to pay the mortgage money, the mortgagee would have under Art. 116, Sch. II of the Limitation Act, six years to bring his suit on the covenant; and the question of limitation on an application for a supplemental decree under s. 90 of the Transfer of Property Act is, whether the personal remedy was barred at the date of the institution of the suit, and not whether it would be barred at the date of the application. *Tiluck Singh* v. *Parsotein Proshad; I. L. R. 22 Calc. 924; Bai Manekbai* v. *Manekji Kavasji, I. L. R. 7 Bom. 213,* and *Purna Chandra Mondal* v. *Radha Nath Das, I. L. R. 33 Calc. 867,* approved. RAHMAT KARIM *v.* ABDUL KARIM (1907).
I. L. R. 34 Calc. 672

11.—*Parties, substitution of—New plaintiff—Assignment—Assignee substituted after period of limitation—Civil Procedure Code (Act XIV of 1882), s. 372—Limitation Act (XV of 1877), s. 22.*—In a suit brought within the period of limitation the name of the assignee of the original plaintiff was, after expiry of the period, substituted for that of the latter which was struck off the record. *Held,* that s. 22 of the Limitation Act was applicable, and that if a person who has not been on the record is substituted as a plaintiff in the place of the original plaintiff under s. 672 of the Code of Civil Procedure, the person so substituted must be taken to be brought on the record subject to the law of limitation applicable to the case. That section does not exclude the operation of s. 22 of the Limitation Act and, except in the case of the legal representative of a deceased party, the person substituted as plaintiff must be regarded as a new plaintiff within the meaning of the latter section. *Harrak Chand* v. *Deonath Sahoy, I. L. R. 25 Calc. 409,* approved. *Suput Singh* v. *Imrit Tewari, I. L. R. 5 Calc. 720,* disapproved and distinguished. ABDUL RAHMAN *v.* AMIR ALI (1907).
I. L. R. 34 Calc. 612

LIMITATION—*concluded.*

12.—*Public Demands Recovery Act (Bengal Act I of 1895), ss. 8, 10—Notice—Limitation Act (XV of 1877), Sch. II, Arts. 12, 142—Sale in execution of certificates—Suit to set aside sale—Possession—Certificate, effect of.*—When notice has not been served under s. 10 of the Public Demands Recovery Act, 1895, and a suit is brought to set aside the sale and to recover possession of the property sold, Art. 142 and not Art. 12 of Sch. II of the Limitation Act is applicable. Under s. 8 of the Public Demands Recovery Act, a certificate duly made and filed, has, in so far as regards the remedies for enforcing it, the force and effect of a decree of a Civil Court notwithstanding that notice may not have been served under s. 10; but a sale held without service of notice under s. 10 is wholly without authority, and is a nullity. PURNA CHANDRA CHATTERJEE *v.* DINABANDHU MUKERJEE (1907).
I. L. R. 34 Calc. 811

13.—*Second appeal—Application to bring in legal representatives of deceased respondent in second appeal Limitation Act (XV of 1877), Sch. II, Art. 175C—Code of Civil Procedure (Act XIV of 1882), ss. 587, 582—Abatement—Death of one of several respondents pending appeal.*—The period of limitation laid down in Art. 175C, Sch. II, of the Limitation Act, for an application to bring in the heirs of a deceased party applies to second appeals. S. 587 of the Code of Civil Procedure must be read in conjunction with s. 582 of the Code and Art. 175C, Sch. II of the Limitation Act. *Madhuban Das* v. *Narain Das, 4 All. L. J. R. 397*, referred to. *Susya Pillai* v. *Aiyakannu Pillai, I. L. R. 29 Mad. 529*, dissented from. Where one of the plaintiffs respondents in a second appeal against a decree for rent passed in their favour had died and no application was made to bring in his heirs within the period allowed by Art. 175C, Sch II of the Limitation Act:—*Held*, that the appeal had abated so far as the deceased respondent was concerned, but that the appellants were entitled to go on with the appeal as against the other respondents. *Chandarsang Versabhai* v. *Khimabhai Raghabhai, I. L. R. 22 Bom. 718*, referred to. UPENDRA KUMAR CHAKRAVARTI *v.* SHAM LAL MANDAL (1907).
I. L. R. 34 Calc. 1020

14.—*Execution of decree—Civil Procedure Code (Act XIV of 1882), s. 230—Decree on appeal, modifying the first decree.*—A decree for payment of money was modified on appeal. *Held*, that the decree to be executed being the decree made on appeal, the twelve years mentioned in s. 230 of the Code of Civil Procedure would run from the date of the appellate decree. MAHOMED MEHDI BELLA *v.* MOHINI KANTA SHAHA CHOWDHRY. (1907) . . . . **I. L. R. 34 Calc. 874**

LIMITATION ACT (XV OF 1877).

——s. 4—

See COURT-FEES, INSUFFICIENCY OF.
I. L. R. 29 All. 749

LIMITATION ACT (XV OF 1877)—*continued.*

See LIMITATION, PLEA OF.
I. L. R. 34 Calc. 941

——s. 5—

—Appeal—Presentment of an appeal after the prescribed period—Delay—Excuse of delay—Discretion of the Court in not excusing the delay—Appeal against the exercise of the discretion.—An order in execution proceedings was passed on the 25th February 1899. An appeal lay against the order; but the aggrieved party notwithstanding filed a suit on the 24th February, 1900, in a separate proceeding. It was decided in the first appeal in that suit on the 30th September, 1903, by the District Judge that the suit was barred by s. 244 of the Civil Procedure Code. The party concerned again waited till the 4th January, 1904, when he filed in the District Court his appeal against the order dated the 25th February, 1899. The District Judge decided that there was no sufficient reason for not presenting the appeal in time, and dismissed the appeal as being barred by limitation. *Held*, that having regard to the delay which occurred in presenting the appeal between the 30th September 1903, to the 4th January, 1904, it was not open to the appellant to contend that the District Judge had exercised his discretion, under s. 5 of the Limitation Act, in a capricious or arbitrary manner. BHIMRAO *v.* AYYAPPA (1906) . . **I. L. R. 31 Bom. 33**

—Sufficient cause—Appeal to the District Judge, which was dismissed on the ground of jurisdiction—Subsequent appeal to the High Court out of time.—An appeal against an order passed by the Subordinate Judge in an execution proceeding arising out of a suit valued at more than 5,000 rupees, was preferred to the District Judge in time. The learned District Judge having dismissed the appeal on the ground that he had no jurisdiction to hear it, an appeal was preferred to the High Court obviously out of time. On a preliminary objection being taken that the appeal was barred by limitation under Art. 156, Sch. II of the Limitation Act: *Held*, that inasmuch as it was not established in the present case that the belief of the appellant that the appeal lay to the District Court, was formed with due care and attention and that there was consequently sufficient cause for not presenting the appeal within time, the appellant was not entitled to an extension of time by virtue of s. 5 of the Limitation Act, and that it was so barred. SARAT CHANDRA BOSE *v.* SARASWATI DEBI (1907) . **I. L. R. 34 Calc. 216**

——ss. 5, 14—

See APPEAL, DELAY IN FILING.
I. L. R. 29 All. 638

——s. 7—

See BIRTH, PROOF OF.
I. L. R. 29 All. 29

LIMITATION ACT (XV OF 1877)— *continued.*

—Evidence—Proof of date of birth—Minority—Plaintiff having three years to sue after attaining majority—Act No. XV of 1877 (Indian Limitation Act), s. 7—Nature of evidence required to prove date of birth.—Although in India it is difficult to prove such a fact as the date of birth after a lapse of many years, and it would be unreasonable to require such a class of evidence as would be justly demanded in a similar case in England, the evidence must yet be such as to carry reasonable conviction to the mind. In this case on the proof of the date of the plaintiff's birth depended the question of whether or not the suit was brought within three years of her attaining majority, and it was held that the evidence was insufficient to prove the true date of her birth, and that therefore the suit was barred by limitation. ABA BEGAM *v.* NANHI BEGAM (1906).

I. L. R. 29 All. 29; L. R. 34 I. A. 1

——s. 10—

See EXPRESS TRUST.

I. L. R. 31 Bom. 418

See TRANSFER OF PROPERTY ACT, S. 119.

I. L. R. 30 Mad. 316

—Trust for a specific purpose—Express trust—Resulting trust—Indian Trusts Act (II of 1886), ss. 81, 83.—Per BATCHELOR, *J. (Obiter)* S. 10 of the Limitation Act does not apply where the object of the original trust being uncertain or undiscoverable a resulting trust arises by operation of ss. 81 and 83 of the Indian Trusts Act, 1882. Whether the resulting trust flow from the invalidity of the declared trust or from the impossibility of ascertaining the declared trust it is equally a substituted trust, that is, a trust which is created by the law *faut de mieux*, that is as the best arrangement which the law regards as possible in difficult circumstances. This general rule is affected to this extent only, that where there is a trust covering the whole estate, and the bequests do not exhaust the estate, the trustees are express trustees of the residue for the heir of the testator. MATHURADAS *v.* VANDRAWANDAS (1906) . . **I. L. R. 31 Bom. 222**

——s. 12—

—Limitation—"Time requisite for obtaining a copy."—The words 'the time requisite for obtaining a copy' in the second and third paragraphs of s. 12 of the Indian Limitation Act, 1877, are not confined to cases where the person appealing has in person or by a properly authorized agent applied for a copy of a judgment of decree. *Ramamurthi Aiyar* v. *Subramania Ayar, 12 Mad. L. J. 385*, dissented from. RAM KISHAN SHASTARI *v.* KASHI BAI (1907).

I. L. R. 29 All. 264

——s. 19—

See ACKNOWLEDGMENT OF DEBT.

I. L. R. 29 All. 773

LIMITATION ACT (XV OF 1877)— *continued.*

—Limitation—Acknowledgment of title—By whom such acknowledgment may be made.—S. 19 of the Indian Limitation Act, 1877, does not require that the person making an acknowledgment should have an interest in the property in respect of which the acknowledgment was made at the time when the acknowledgment was given: it prescribes that, if, before the period of limitation expires, an acknowledgment of liability or right has been made in writing signed by the parties against whom the property or right is claimed, a new period of limitation will be computed from the time of the acknowledgment. *Jagabandhu Bhattacharjee* v. *Harimohan Roy, 1 C. W. N. 569*, referred to. JUGAL KISHORE *v.* FAKHR-UD-DIN (1903).

I. L. R. 29 All. 90

—— ss. 19, 20; Sch. II, Arts. 59, 60—

—Limitation—Suit to recover money deposited on current account—Loan—Deposit—Acknowledgment.—Held, that a suit to recover money deposited with a banker on a current account is governed as to limitation by Art. 59, and not by Art. 60, of the second Schedule to the Indian Limitation Act, 1877. *Piaray Lal* v. *Elizabeth Berkeley, F. A. No. 96 of 1882*, decided on the 4th April 1885, followed. In order that an acknowledgment of a debt should be effectual to save limitation under s. 19 of the Indian Limitation Act, it must be signed by the person to be bound thereby. Similarly a part payment of the principal of a debt must appear in the handwriting of the person making the part payment and not in that of any other person, however authorized. *Held*, also, that the mere crediting of interest in a banker's books cannot be regarded, for the purpose of saving limitation, as equivalent to a payment of interest. DHARAM DAS *v.* GANGA DEVI (1907).

I. L. R. 29 All. 773

——s. 22—

See LIMITATION.

I. L. R. 34 Calc. 612

See PARTIES . . **11 C. W. N. 350**

——s. 23, Sch. II, Arts. 35, 120—

See MAHOMEDAN LAW.

I. L. R. 34 Calc. 79

— s. 23, Sch. II, Arts. 35, 120—

—Suit for restitution of conjugal rights.—Limitation.—A suit for restitution of conjugal rights between Mahomedans is governed by Art. 35 of the second Schedule of the Limitation Act, if at the time of the demand and refusal the wife or husband was of full age and sound mind; otherwise Art. 120, Sch. II, of the Limitation Act would apply to such a suit. S. 23 of the Limitation Act does not apply to a suit for restitution of conjugal rights. *Dhanjibhoy Bomanji* v. *Hirabai, I. L. R. 25 Bom. 644*, approved of. ASIRUNNESSA KHATUN *v.* BUZLOO MEAH (1906) . **I. L. R. 34 Calc. 79**

LIMITATION ACT (XV OF 1877)— *continued.*

——s. 28, Sch. II, Art. 44—

See GUARDIAN AND WARD.
I. L. R. 30 Mad. 393

——Sch. II, Art. 11—

See CIVIL PROCEDURE CODE, s. 335.
I. L. R. 34 Calc. 491

——Sch. II, Art. 12—

See MINOR, SUIT BY.
11 C. W. N. 1078

——Sch. II, Arts. 12, cl. (*b*), 95 and 120—

—Public Demands Recovery Act (Bengal Act VII of 1880), ss. 10 and 12—Suit to set aside a sale on the ground that no notice under s. 10 was served—Fraudulent purchase by a co-sharer.—*A* instituted a suit to set aside a sale held under the Public Demands Recovery Act, on the allegation that the defendants, who were his co-sharers, fraudulently suppressed the notice under s. 10 of the Act, and purchased the property in the name of their agent. Upon an objection being taken that the suit was barred by limitation under Art. 12, cl (*b*) of the Limitation Act: *Held*, that the suit to set aside such a sale is governed not by Art. 12, cl. (*b*), but either by Art. 95 or Art. 120 of the Limitation Act. SYAMLAL MANDAL *v.* NILMONY DAS (1907) . . . **I. L. R. 34 Calc. 241**

——Sch. II, Art. 12—

See RENT RECOVERY ACT, SS. 38 AND 39.
I. L. R. 30 Mad. 444

——Sch. II, Art. 12 (*b*)—

See NOTICE. . **I. L. R. 34 Calc. 787**

——Sch. II, Arts. 12, 142—

See LIMITATION. **I. L. R. 34 Calc. 811**

——Art. 13—

—Chaukidari chakran lands—Resumption by Government—Putni lease—Suit by putnidar for possession of the chakran lands.—By virtue of a putni lease granted by the defendant-landlord in 1854, the plaintiff was entitled to the chaukidari chakran lands of the mehal, which were subsequently resumed by Government, and not made over to the zamindar till 1899. Upon a suit by the putnidar to recover possession of the chakran lands, the defendant contended that the suit was barred by limitation under Art. 113 of the Limitation Act. *Held*, that inasmuch as the lands were not in possession of the plaintiffs nor in that of the defendant, until they were made over to the latter by Government, the suit was one for the specific performance of the contract of 1854, and the period of limitation applicable would, therefore, be that prescribed by Art. 113, and not Art. 142 or Art. 144 of Sch. II of the Limitation Act. RANJIT SING *v.* RADHA CHARAN CHANDRA (1907). **I. L. R. 34 Calc. 564**

LIMITATION ACT (XV OF 1877)— *continued.*

——Sch. II, Art. 14—

See RECORD OF RIGHTS.
11 C. W. N. 48

—Ganjam and Vizagapatam Agency Rules Act XXIV of 1839, Rule 20—High Court may interfere when agent decides wrongly on question of limitation—Limitation Act (XV of 1877,) Sch. II, Art. 14 does not apply when Act complained of is a nullity.—An erroneous decision by an Agent acting under the Ganjam and Vizagapatam Agency rules, on a question of limitation is a 'special ground' which will authorise an interference by the High Court under Rule 20 of such rules. Art. 14, Sch. II of the Limitation Act, does not apply to an act done by a Government officer, when such act purports to be done in pursuance of an order, but is, in fact, owing to a mistake, not so done. Such an act is a nullity which need not be set aside. MAHARAJA OF VIZIANAGRAM *v.* SATRUCHERLA SOMASEKARA RAJU (1906) . **I. L. R. 30 Mad. 280**

——Sch. II, Art. 29—

See ATTACHMENT BEFORE JUDGMENT.
I. L. R. 29 All. 615

——Sch. II, Arts. 48, 90, 115—

—Limitation—Suit to recover money given to the defendant to be delivered to a third person.—*A* gave Rs. 300 to *B* in order that it might be delivered to *C*, who had, a few days previously, executed a mortgage in favour of *A*. *B* also executed a bond guaranteeing the repayment of the loan by *C*. On suit by *A* against *B* and *C*, which was decided on the 11th of January 1901, it was discovered that *B* had never paid the money to *C*. On the 1st of December 1904, *A* sued *B* to recover the Rs. 300 paid to him as above described. *Held*, that the rule of limitation applicable was that provided for by Art. 48, if not by Art. 90 or 115 of the Indian Limitation Act, 1877, and the suit was time-barred. *Rameshar Chaubey* v. *Mata Bhikh, I. L. R. 5 All. 341*, referred to. RAM LAL *v.* GHULAM HUSAIN (1907).
I. L. R. 29 All. 579

——Sch. II, Arts. 48, 109—

See ZURPESHGI LEASE.
11 C. W. N. 862

——Sch. II, Art. 49—

—Cause of action arises when defendant's possession becomes wrongful—Possession by Magistrate is possession for rightful owner.—Under Art. 49, Sch. II of the Limitation Act, time begins to run from the time when the property is wrongfully taken. Where property is seized by a Magistrate, the property passes into legal custody and such custody is for the benefit of the rightful owner. Time begins to run against such owner only when by an erroneous order of the Magistrate the property is delivered to some other persons and it is so even when such other person had been in wrong-

LIMITATION ACT (XV OF 1877)— *continued.*

ful possession previous to the seizure by the Magistrate. *Mudvirapa Kulkarni* v. *Fakirapa Kenardi, I. L. R. 7 Bom. 427*, distinguished. RAMASWAMY AYYAR *v.* MUTHUSAMY AYYAR (1906).
I. L. R. 30 Mad. 12

—— Sch. II, Arts. 61, 83—

See SURETY. . **I. L. R. 29 All. 627**

——Sch. II, Arts. 62, 120—

1.—*Suit against Benamidar—Art. 62 applies to suits against benamidar by real owner to recover money received by the former.*—The period of limitation for an action by the real owner against a benamidar to recover money received by the latter for the use of the former, is that prescribed in Sch. II, ART. 62 of the Limitation Act. Art. 120 does not apply to such a case. *Mahabala Bhatta* v. *Kunhunna Bhatta, I. L. R. 21 Mad. 373*, followed. SUBBANNA BHATTA *v.* KUNHANNA BANTA (1907) **I. L. R. 30 Mad. 298**

2.—*Suit to recover money received under a transaction which is an absolute nullity governed by Art. 62 and not 120, and cause of action arises on the date of payment.*—A suit by *A* to recover from *B* money which *B* had recovered from a debtor of *A* under colour of a void assignment of such debt by *A* to *B* is an action for money had and received and must be brought within three years of the payment by the debtor to *B* under Art 62 of Sch. II of the Limitation Act. Art. 120 does not apply to such a case. *Nund Lall Bose* v. *Meer Aboo Mahomed, I. L. R. 5 Calc. 597*, dissented from. *Mahomed Wahib* v. *Mahomed Ameer I. L. R. 32 Calc. 532*, followed. SHANMUGA PILLAI *v.* MINOR GOVINDASAMI (1907).
I. L. R. 30 Mad. 459

— Sch. II, Arts. 75, 116—

See BOND. . . **11 C. W. N. 903**

——Sch. II, Art. 75—

—*Bond—Instalments—Waiver of right to recover whole amount on non-payment of instalment—Limitation.*—Where money secured by a bond is payable by instalments, with a condition that the whole amount secured will become due upon non-payment of any instalment, the creditor is not bound to enforce this condition, but he may accept payment of instalments after due date—thereby impliedly waiving his right to sue for the whole amount due—and may sue upon a subsequent default in payment of any future instalment. *Basant Lal* v. *Gopal Pershad, Weekly Notes, 1906, 193*, distinguished. MAHARAJA OF BENARES *v.* NAND RAM (1907) . **I. L. R. 29 All. 431**

——Sch. II, Art. 79, cl. (6)—

See FUTURE MAINTENANCE, DECREE FOR.
I. L. R. 30 Mad. 504

LIMITATION ACT (XV OF 1877)— *continued.*

——Sch. II, Art. 91—

See FIDUCIARY RELATIONSHIP.
I. L. R. 30 Mad. 169

See LIMITATION.
I. L. R. 31 Bom. 1

See MADRAS RENT RECOVERY ACT, S. 18.
I. L. R. 30 Mad. 248

—*Art. 91 does not apply to defendants in possession—Madras Rent Recovery Act (VIII of 1865), s. 18—Seven days required by the section means seven clear days.*—A defendant in possession is not precluded from setting up the invalidity of a sale, because his right to have it set aside was barred at the date of suit by Art. 91 of Sch. II to the Limitation Act. The seven days which, in fixing the day of sale under s. 18 of the Rent Recovery Act, must be allowed from the time of notice, are seven whole days, and not seven periods of 24 hours calculated from the hour of the day on which the notice was issued. *McQueen* v. *Jackson*, [*1903*] *2 K. B. 163*, referred to. RAMANASARI *v.* MUTHUSAWMI NAIK (1906).
I. L. R. 30 Mad. 248

— Sch. II, Arts. 91, 141—

See HINDU LAW—WIDOW.
I. L. R. 34 Calc. 329

——Sch. II, Art. 95—

See LIMITATION.
I. L. R. 34 Calc. 711

——Sch. II, Arts. 95, 120—

—*Fraud must be fraud on party to the decree or transaction—Art. 120 applies to suits by reversioner for relief against fraudulent decree brought about by widow—Cause of action accrues when injury done to reversion—Civil Procedure Code, s. 244 does not apply when decree itself is impugned—Res judicata.*—Fraud within the meaning of Art. 95 of Sch. II of the Indian Limitation Act is fraud practised upon a party to the decree or transaction in which the fraud was committed. *Chandra Nath Chowdhry* v. *Tirthanund Thakoor, I. L. R. 3 Calc. 504*, followed. Art. 95 does not apply to suits by a reversioner impeaching on the ground of fraud against himself transactions of a preceding qualified owner to which he was no party. The period of limitation applicable to such cases is that prescribed by Art. 120. If the reversioner brings a declaratory suit to set aside the decree or other transaction brought about by the fraud of the qualified owner, the suit must be brought within six years of such decree or transaction. He is not, however, bound to bring such a suit and it is open to him to wait until the succession falls in and if thereafter anything is done constituting an injury to his vested right, then to pursue, his

LIMITATION ACT (XV OF 1877)— *continued.*

remedy. Where property in the hands of the reversioner is attached in execution of a fraudulent decree against the widow, the injury is the attachment and a suit for redress in respect of such attachment will not be barred under Art. 120 if brought within six years of the attachment, which is the cause of action. *Parekh Rancher* v. *Bai Vakhat, I. L. R. 13 Bom. 119,* not followed. An objection by the reversioner in execution to the attachment on the ground that the decree is not binding on this reversionary right is not triable in execution under s. 244 and any adjudication thereon, not being appealable under s. 244, will not be binding in subsequent proceedings. TALLAPRAGADA SUNDARAPPA *v.* BOORUGAPALLI SREERAMULU (1907) . **I. L. R. 30 Mad. 402**

——Sch. II, Arts. 116, 178—

See LIMITATION. . **11 C. W. N. 674**
I. L. R. 34 Calc. 672

——Sch. II, Arts. 118, 141—

See LIMITATION. **I. L. R. 30 Mad. 308**

——Sch. II, Arts. 120, 144—

See LAND REGISTRATION.
11 C. W. N. 186

——Sch. II, Art. 120—

—A suit to recover compensation for land acquired, instituted on the refusal of the Collector to award compensation under the Land Acquisition Act, is governed by Art. 120, Sch. II of the Limitation Act. The right to sue accruing either from the date of the acquisition or the refusal by the Collector to award compensation. RAMESWAR SINGH *v.* SECRETARY OF STATE FOR INDIA (1907).
I. L. R. 34 Calc. 470

—— Sch. II, Art. 125—

—Limitation—Alienation—Fictitious award—Hindu widow.—A Hindu widow, plaintiff in a suit to recover property, in respect of which she was entitled to a Hindu widow's estate, from the possession of the widows of other members of her husband's family, entered upon a collusive arbitration by which the whole of the property of the plaintiff's husband was divided amongst certain female members of the family, it being declared that each of the parties to the arbitration proceedings took an absolute estate in the share allotted to her. *Held,* that this proceeding amounted to an "alienation" of the property so dealt with within the meaning of Article 125 of the second Schedule to the Indian Limitation Act. *Sheo Singh* v. *Jeoni, I. L. R. 19 All. 524,* referred to. RAM SARUP *v.* RAM Dei (1906).
I. L. R. 29 All. 239

——Sch. II, Art. 127—

—Time does not run until sharer excluded—Transfer of Property Act (IV of 1882), s. 6 (a)—Hindu Law, Reversioner—Renunciation of reversionary right is a transfer of an expectancy and as such is void.—*A,* a member of an undivided Hindu family, was adopted by one *V,* a widow His adoption was declared invalid in 1883. He consented to reside with *V,* and in 1896 orally renounced his right to a share in the property belonging to his natural family in consideration of his co sharers who were also the reversioners of *V,* renouncing the reversionary right in the properties held by *V* as the heiress of her husband. In a suit brought by *A* in 1901 for partition of the property in his natural family:—*Held,* that A's residing with *V* from 1883 to 1896 did not amount to an abandonment by *A* of his right to partition or to an exclusion of *A* to his knowledge, from the enjoyment of his family property and that his right to partition was not barred by Art. 127, Sch. II of the Limitation Act:—*Held,* further, that the renunciation of their reversionary rights by the reversioners amounted to a transfer of an expectancy and was a nullity under s. 6 (a) of the Transfer of Property Act, and that such renunciation cannot be a good consideration for a contract. DHOORJETI SUBBAYYA *v.* DHOORJETI VENKAYYA (1906) . . **I. L. R. 30 Mad. 201**

——Sch. II, Art. 132—

See HINDU LAW—ALIENATION.
I. L. R. 34 Calc. 184

——Sch. II, Arts. 132, 147—

—Suit on mortgage bond to enforce payment of amount due by sale of mortgaged property—Suit on mortgage in English form for foreclosure or sale—Transfer of Property Act (IV of 1882), ss. 58, 88, 100.—A suit on a simple mortgage bond to enforce payment of the amount due on the bond by sale of the mortgaged property is governed by Article 132 of Schedule II of the Limitation Act (XV of 1877) and not by Article 147. The latter Article is limited in its application to the one class of mortgages in which alone the suit can be, and always is, brought for foreclosure or sale, that is to mortgages in the English form. VASUDEVA MUDALIAR *v.* SRINIVASA PILLAI (1907).
I. L. R. 30 Mad. 426;
L. R. 34 I. A. 186

——Sch. II, Art. 134—

See MORTGAGE—REDEMPTION.
I. L. R. 29 All. 471

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 62, 63 . **I. L. R. 29 All. 471**

——Sch. II, Art. 138—

See EXECUTION OF DECREE.
I. L. R. 29 All. 463

——Sch. II, Arts. 139, 143—

See EJECTMENT, SUIT FOR.
11 C. W. N. 661

LIMITATION ACT (XV OF 1877)—*continued.*

——**Sch. II, Art. 144**—

See ADVERSE POSSESSION.
I. L. R. 29 All. 593

——**Sch. II, Arts. 147, 120, 132**—

See HINDU LAW—JOINT FAMILY.
I. L. R. 29 All. 544

——**Sch II, Art. 149**—

Art. 149 of Sch. II of the Limitation Act applies only to suits brought by the Secretary of State or on his behalf and not to suits brought by persons deriving title from him. KUTHAPERUMAL RAJALI *v.* THE SECRETARY OF STATE FOR INDIA (1906).
I. L. R. 30 Mad. 245

——**Sch. II, Art. 164**—

—Civil Procedure Code (Act XIV of 1882), s. 108—Ex parte decree against more defendants than one—Execution against some of the defendants—Application by the other defendants to set aside the decree—Limitation.—When a decree is passed against more defendants than one, and the decree is executed against some of the defendants only, that is not a process for enforcing the judgment as against the other defendants within the meaning of Art. 164, Sch. II of the Limitation Act (XV of 1877). *Ravji Ramchandra* v. *Ramji Bhaikaji, (1888) P. J. 56,* followed. HANMANT *v.* SHANKAR (1907) . **I. L. R. 31 Bom. 303**

——**Sch. II, Arts. 164, 169**—

See CIVIL PROCEDURE CODE, SS. 108, 560, 582. . . **I. L. R. 30 Mad. 535**

——**Sch. II, Arts. 173 A, 179**—

See EXECUTION OF DECREE.
I. L. R. 30 Mad. 537

——**Sch. II, Art. 175A**—

—Substitution, application for—Application after preliminary decree for sale in mortgage-suit —Mortgagee, death of—Application by heirs—Transfer of Property Act (IV of 1882), s. 88 —Conditional decree, effect of.—Where a mortgagee having obtained a preliminary decree for sale under s. 88, Transfer of Property Act, died and his heirs more than six months after his death applied to be brought on the record in the place of the deceased and to have an order absolute for sale made in their favour: *Held,* that the application for substitution was not governed by Art. 175A of Sch. II of the Limitation Act. Applications governed by Art. 175A of Sch. II of the Limitation Act are applications for substitution made in the course of the suit. After a conditional decree for sale is passed on a mortgage the suit as such is at an end. *Ajudhia Pershad* v. *Baldeo Singh, I. L. R. 21 Calc. 818,* and *Tara Prosad Roy* v. *Bhobodeb Roy, I. L. R. 22 Calc. 931,* referred to. MEHARI BIBI *v.* YAKUB ALI (1906 . **11 C. W. N. 156**

LIMITATION ACT (XV OF 1877)—*continued.*

——**Sch. II, Art. 175C**—

See CIVIL PROCEDURE CODE, SS. 368, 582 AND 587. . **I. L. R. 29 All. 535**

See SECOND APPEAL, ABATEMENT OF.
I. L. R. 34 Calc. 1020

—Civil Procedure Code (Act XIV of 1882), ss. 368, 582, 587—Application to bring on to the record the heirs of a deceased respondent—Limitation.—Held, that Art. 175C of the second Schedule to the Indian Limitation Act applies as well to appeals from appellate decrees as to appeals from original decrees. *Susya Pillai* v. *Aiyakannu Pillai, I. L. R. 29 Mad. 529,* dissented from. *Vakkalagadda Narasimham* v. *Vahizulla Sahib, I. L. R. 28 Mad. 498,* followed. MADHUBAN DAS *v.* NARAIN DAS (1907) . . . **I. L. R. 29 All. 535**

——**Sch. II, Art. 178**—

See LEGAL REPRESENTATIVE.
11 C. W. N. 186

——**Sch. II, Arts. 178, 179**—

See LIMITATION. **I. L. R. 29 All. 279**
I. L. R. 30 Mad. 209

——**Sch. II, Art. 179**—

See EXECUTION OF DECREE, STEP IN AID OF. . . **I. L. R. 29 All. 301**

See STEP IN AID OF EXECUTION.
I. L. R. 30 Mad. 541

—Application for execution against some defendants jointly liable under decree takes effect against all persons jointly liable.—Where a decree awards mesne profits against *A* and *B* jointly, and costs jointly against *A*, *B* and *C*, an application to execute the decree for mesne profits against *A* and *B* keeps alive the right to execute the decree for costs against *C* under part 2 of paragraph 2, explanation 1 to Art. 179 of Sch. II to the Limitation Act. *Krishnamachariar* v. *Mangammal, I. L. R. 26 Mad. 91,* referred to. SUBRAMANYA CHETTIAR *v.* ALAGAPPA CHETTIAR (1906).
I. L. R. 30 Mad. 268

—Application in accordance with law.—A decree passed in a redemption suit directed "that the plaintiff do recover possession on payment of Rs. 865": *Held,* that the payment of the amount was a condition precedent to the making of an order for the delivery of the property but not to the making of an application for a conditional order and that an application for execution of the decree without paying the amount was an application "in accordance with law" within the meaning of Art. 179, Sch. II of the Limitation Act. SYED HUSSAIN SAIB ROWTHEN *v.* RAJAGOPALA MUDALIAR (1906) . . . . **I. L. R. 30 Mad. 28**

LIMITATION ACT (XV OF 1877)—*continued.*

—Decree—Execution of decree—Application to execute the decree—Application not accompanied by a certified copy of the decree under execution—Application made 'in accordance with law'—Step-in-aid—High Court Civil Circulars Rule 80.—On the 3rd February 1900 the decree-holder first applied to execute his decree. In 1902 he again applied to execute his decree; but this second application was dismissed as it was not accompanied by a certified copy of the decree (High Court Civil Circulars Rule 80). On the 18th June 1905 the decree-holder applied for the third time to execute the decree. The lower Courts held that the application of 1902 not having been accompanied by a certified copy of the decree was not one made 'in accordance with law,' and that consequently the third application was barred by time:—*Held*, that the application of 1902 though not accompanied by a copy of the decree, as required by Rule 80 of the High Court Circulars, was an application 'in accordance with law' within the meaning of Art. 179, Sch. II of the Limitation Act (XV of 1877); and that, therefore, the third application was within time. *Sadashiva* v. *Ramchandra, 5 Bom. L. R. 394*, not followed. *Pachiappa Achari* v. *Poojali Seenan, I. L. R. 28 Mad. 557*, followed. The proper view to take of Rule 80 of the High Court Civil Circulars is not that it prescribes the essentials which an application for execution must contain and which are necessary to constitute the application itself an application in accordance with law, but that it requires something further besides the application itself, an accompaniment extraneous to the application, as a condition precedent to further action by the Court executing the decree. The Limitation Act (XV of 1877) as an enactment of a restrictive character must be strictly construed. *Umiashankar* v. *Chhotalal, I. L. R. 1 Bom. 19*, followed. RAMCHANDRA *v.* LAXMAN (1906).

I. L. R. 31 Bom. 162

——Sch. II, Art. 179, Expl. I, para. 2—

—Decree—Jointly passed—Application for execution against surety—Civil Procedure Code (Act XIV of 1882), s. 253—A decree cannot be treated as "jointly passed" as against the judgment-debtor and his surety.—Before the passing of the decree in an original suit, *N* became liable as surety for the due performance of part of the decree. The decree in the original suit was passed in January 1893. The decree-holder filed several applications to execute the decree against the judgment-debtor. All these applications were within the periods prescribed by the Limitation Act (XV of 1877). But it was only in 1902 that he filed an application to execute the decree under s. 253 of the Civil Procedure Code (Act XIV of 1882) as against the surety. *Held*, that the application to execute the decree against the surety was barred by time, since the decree cannot be treated as passed jointly as against the judgment-debtor and the surety, within the meaning of Art. 179, Expl. 1, paragraph 2, of the second Schedule to the Limitation Act (XV of 1877). The words "passed jointly" in Art. 179, Expl. 1, paragraph 2, of the second Schedule to the Limitation Act (XV of 1877) refer to the decree which is "passed jointly" against more persons than one; and do not mean a decree where a joint liability may be deduced by combining the surety bond and the provisions of s. 253 of the Civil Procedure Code, with the decree in dispute. NARAYAN *v.* TIMMAYA (1906).

I. L. R. 31 Bom. 50

LIMITATION ACT (XV OF 1877)—*concluded.*

——Sch. II, Art. 179 (5)—

See SECOND APPEAL.

I. L. R. 30 Mad. 1

—Date of "issue of notice" means date of actual issue of notice and not date of order directing issue.—The date of "issue of notice" from which time is to run under clause 5 of Art. 179 of Sch. II of the Limitation Act is not the date on which the issue of the notice is ordered by the Court but the date of the actual issue of the notice. *Govind* v. *Dada, I. L. R. 28 Bom. 416*, dissented from. CHERUVATH THALANGAL BAPU *v.* NERATH THALANGAL KANARAN (1906).

I. L. R. 30 Mad. 30

LIQUIDATOR.

—Indian Companies Act (VI of 1882), ss. 177, 185, 189, 191—Order refusing supervision order under s. 191 appealable under s. 169—Liquidator, duties of—Where liquidators, appointed under s. 185, misbehave, supervision order must be made by Court on the motion of creditors.—The duties imposed upon liquidators by s. 177 of the Companies Act cannot be delegated by them to others. Liquidators appointed by the company under s. 177 can be removed only by the Court under s. 185 and are not subject to the control of the company in the performance of their duties. Where the liquidators on insufficient grounds refuse to deal with the claim of a creditor on its legal merits, the Court is bound to grant a supervision order on the application of such creditor. KESAVALOO NAIDU *v.* MURUGAPPA MUDALI (1906) . . **I. L. R. 30 Mad. 22**

LIQUOR, SUPPLY OF.

See CANTONMENTS ACT.

I. L. R. 31 Bom. 523

LIS PENDENS.

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 52, 86 AND 87.

I. L. R. 29 All. 76

1.*—Lis pendens, doctrine of—Sale for arrears of revenue pending proceedings in mortgage suit—Suit for recovery of possession by lessor against third party, when maintainable.*—The doctrine of *lis pendens* applies to transfers of immoveable property *in invitum*. *Radha Madhab Holdar* v. *Monohur Mukerjee, I. L. R. 15 Calc. 756; Prem Chand*

LIS PENDENS—*continued.*

Pal v. *Purnima Dasi, I. L. R. 15 Calc. 546*; *Raj Kishen Mookerjee* v. *Radha Madhub Holdar, 21 W. R. 349*, relied on. RAJ KISHORE AWASTI v. JADU NATH BASAK (1905). . 11 C. W. N. 828

2.—*Lis pendens—Contest between prior purchaser under a second mortgage and subsequent purchaser under a first mortgage—Second mortgage executed after institution of suit on first mortgage, but before summons served—"Contentious" suit—Act No. IV of 1882 (Transfer of Property Act), s. 52.*—The plaintiff was purchaser in execution of a decree based on a first mortgage of the property in suit. The defendant was in possession as a prior purchaser in execution of a decree on a second mortgage of the same property, passed in a suit to which the first mortgagee was not made a party. The second mortgage was executed after the institution of the suit on the first mortgage but before the summons had been served. *Held*, that the doctrine of *lis pendens* applied, and that the plaintiff had the better title. Where a suit is contentious in its origin and nature, it is not necessary that the summons should have been served in the suit in order to make it a "contentious" one within the meaning of s. 52 of the Transfer of Property Act (IV of 1882), and render the doctrine of *lis pendens* applicable. Irrespective of the doctrine of *lis pendens* it appeared from the circumstances of the case that the defendant was cognizant of first mortgage, of the decree made on the basis of it and of the sale proceedings which took place in execution of the decree. FAIYAZ HUSAIN KHAN *v.* PRAG NARAIN (1907).
I. L. R. 29 All. 339; L. R. 34 I. A. 102

3.—*Lis pendens—Transfer of Property Act (IV of 1882), s. 52—Civil Procedure Code (Act XIV of 1882)—Contentious suit—Active prosecution—Non-service of the summons on the defendant—Transfer of property by the defendant.*—S. 52 of the Transfer of Property Act (IV of 1882) imposes two conditions—(*a*) the existence of a contentious suit and (*b*) that the transfer should be during its active prosecution in a Court of the kind described in the section. *Semble*: Every real suit (as distinguished from a collusive one) to which the Civil Procedure Code (Act XIV of 1882) applies, is *primâ facie* contentious. According to the Civil Procedure Code the essentials of a suit are—(1) opposing parties, (2) a subject in dispute, (3) a cause of action, and (4) a demand of relief. If there is no inaction on the plaintiff's part the suit would be contentious, notwithstanding the fact that the service of the summons could not be effected on the defendant. A suit cannot be said to be non-contentious merely because the decree therein is passed *ex parte*. *Annamalai Chettiar* v. *Malayandi Appaya Naik, I. L. R. 29 Mad. 426*, followed. *Upendra Chandra Singh* v. *Mohri Lal Marwari, I. L. R. 31 Calc. 745*, not followed. The defendant having transferred his property to another during the active prosecution of the suit but before the service of the summons: *Held*, that the doctrine of *lis pendens* applied. *Radhasyam Mohapattra* v. *Sibu Panda, I. L. R. 15 Calc. 647*; *Abboy* v. *Annamalai, I. L. R. 12 Mad. 180*, *Parsotam Saran* v. *Sanehi Lal, I. L. R. 21 All. 408*; *Upendra Chandra Singh* v. *Mohri Lal Marwari, I. L. R. 31 Calc. 745*, not followed. *Jogendra Chunder Ghose* v. *Ful Kumari Dassi, I. L. R. 27 Calc. 77*, and *Annamalai Chettiar* v. *Malayandi Appaya Naik, I. L. R. 29 Mad. 426*, approved. *Per* BEAMAN, *J.*—I am clearly of opinion that from the moment a suit of any sort whatever, except only collusive suits, is filed, it is potentially contentious, so called friendly suits, I think, certainly are. For the purpose then of conditioning the rule of *lis pendens*, I would say that the filing of any, but a collusive suit, is enough. KRISHNAPPA *v.* SHIVAPPA (1907) . . . . I. L. R. 31 Bom. 393

LIS PENDENS—*concluded.*

LOAN.

See LIMITATION ACT (XV OF 1877), SS. 19 20, SCH. II, ARTS. 59, 60.
I. L. R. 29 All. 773

LOCAL SELF-GOVERNMENT ACT (BENG. III OF 1885).

——ss. 78, 139—

See ULTRA VIRES . 11 C. W. N. 1099

——minority—

See LIMITATION ACT, S. 7; SCH. II, ARTS. 178 AND 179. I. L. R. 29 All. 279

LURKING HOUSE-TRESPASS.

—*Lurking house-trespass by night—Intention—Burden of proof.*—The accused was found inside the house of the complainant at midnight, and his presence was discovered by the wife of the complainant crying out that a thief was taking away her hansli. The evidence of the complainant clearly showed that the accused was not there with the consent, or at the invitation, or for the pleasure of the complainant. *Held*, that the accused was properly convicted under s. 456 of the Indian Penal Code, it being for him to show that his intention was under the circumstances innocent. *Brij Basi* v. *The Queen-Empress, I. L. R. 19 All. 74*, distinguished. *Balmakund Ram* v. *Ghansamram, I. L. R. 22 Calc. 391*, followed. EMPEROR *v.* ISHRI (1906).
I. L. R. 29 All. 46

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MADRAS ACT.

——1864—II—

See MADRAS REVENUE RECOVERY ACT.

——1865—VIII—

See MADRAS RENT RECOVERY ACT.

MADRAS ACT—*concluded.*

——1866—IV—

See MADRAS ENFRANCHISED INAMS ACT.

——1876—I—

See MADRAS LAND REVENUE ASSESSMENT ACT.

——1884—IV—

See MADRAS DISTRICT MUNICIPALITIES ACT.

——1895—III—

See MADRAS HEREDITARY VILLAGE OFFICES ACT.

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884).

——s. 45—

—Agreement not in accordance with section not binding on Municipality even though partly acted upon.—An agreement falling within the scope of s. 45 of the District Municipalities Act, is invalid if the provisions of the section have not been complied with and is not binding on either of the parties to it. The fact that such an agreement was partially acted upon, cannot render it an operative contract. *Ahmedabad Municipality* v. *Sulemanji, I. L. R. 27 Bom. 618,* followed. RAMAN CHETTI *v.* THE MUNICIPAL COUNCIL OF KUMBAKONAM (1907).
I. L. R. 30 Mad. 290

——ss. 47, 66 (1)—

—Tax on houses, a yearly tax—When ownership arises after assessment, such owner liable for whole tax and not only for instalments accruing due after acquisition of ownership.—The provisions of s. 66 (*1*) and other sections of the Madras District Municipalities Act, show that the tax imposed on houses under s. 47 of the Act is a *yearly* tax, although for the sake of convenience it may be made payable in instalments. A person becoming the owner of a house subsequent to such assessment becomes liable as owner for the whole yearly tax and not only for the instalments that accrue due after his acquisition of ownership. It is not compulsory on the Municipality to apportion the tax among the several owners during the period and the provisions of the Transfer of Property Act regarding the obligations of buyer and seller in respect of the payment of taxes do not apply as between the Municipality and the subsequent owner. THE CHAIRMAN OF THE MUNICIPAL COUNCIL, NELLORE *v.* DWARAPALLY KOTTAMMA (1907) . . I. L. R. 30 Mad. 423

——s. 188 (*n*)—

—Not necessary to constitute offence that the cattle should have been kept for purposes of trade —No offence if cattle not habitually kept.—An offence under s. 188 (*n*) of Madras Act IV of 1884 is committed when a person keeps more than 10 head of cattle in a private place, though not for purposes of trade. It is necessary, however, that there must be regular user of the place for keeping more than 10 head of cattle; and a mere temporary user for such purpose will not constitute the offence. EMPEROR *v.* MAYANDI KONAN (1906).
I. L. R. 30 Mad. 220

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884)—*concluded.*

——s. 222—

—Section applies to lanes having no side drains or ditches.—The obligation imposed on house-owners by s. 222 of the District Municipalities Act, of not letting dirty water pass into the street is not conditional on the existence of drains made by the municipality. The hardship which may be inflicted on house-owners where the municipality has provided no drains is a matter to be considered in graduating the penalty. EMPEROR *v.* NAGAN CHETTY (1906)
I. L. R. 30 Mad. 221

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884) AS AMENDED BY ACT III OF 1897.

——ss. 10, 10-A, 19, 250—

—Rules 6, 34, 35 and 36 of rules framed by Government under s. 250—Election of Councillor invalid under rule 6 if defect existed before election although opinion of Governor in Council expressed after—Finality of the Collector's order under rule 36—Powers of Government under rule 34 exist unless order is passed by the Collector under rules 35 and 36—Rules 35 and 36 apply only when petition presented to Collector—Rules 34, 35 and 36 not ultra vires.—Under s. 10-A of the Madras District Municipalities Act and rule 6 of the rules framed under s. 250, a person is disqualified from being appointed or elected a Councillor if, before his election, he is convicted of an offence, which, in the opinion of the Governor in Council, disqualifies him from being a Councillor, even though such opinion of the Governor in Council is arrived at after the election. The refusal by the Governor in Council to remove a Councillor under s. 19 for such a conviction is no bar when such Councillor is subsequently re-elected, to the invalidation of the election on the ground of such conviction. Rules 34, 35 and 36 are not *ultra vires.* The rules were validly made in exercise of the powers conferred by s. 250 (*1*); and even if not so, the power to prescribe conditions conferred by s. 10, empowers the Governor in Council to make such rules. Rules 35 and 36 prescribe the procedure to be followed when a petition contesting the election is presented. The word 'then' in rule 35 means 'after such petition is presented to the Collector' and not 'after the Governor in Council has taken action under rule 34' The Governor in Council taking action under rule 34 is not confined to putting the Collector in motion under rule 35, but can pass orders himself. Such power is not taken away by the powers conferred on the Collector under rules 35 and 36, but only by an order of the Collector

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884) AS AMENDED BY ACT III OF 1897—*concluded.*

duly passed under those rules on a petition presented to him. The Governor in Council may take action under rule 34, whether a petition has been presented to the Collector or not. The fact that the Governor in Council may, under such circumstances by notification, remove the Councillor under s. 19 of the Act, does not affect the validity of such rule, which enables him to invalidate the election without a notification. *Per* WALLIS, *J.*—Rules 35 and 36 do not warrant the validity of an election being questioned on the ground that the person elected was likely to bring the municipal administration into contempt without such enquiry as is provided by the rules; and the pronouncement of such disqualification by the Governor in Council under rule 34 without such enquiry cannot be supported. SECRETARY OF STATE FOR INDIA *v.* VENCATESALU NAIDU (1906) . . . . I. L. R. 30 Mad. 113

MADRAS ENFRANCHISED INAMS ACT (IV OF 1866).

See INAM. . I. L. R. 30 Mad. 434

MADRAS HEREDITARY VILLAGE OFFICES ACT (III OF 1895).

——s. 13—

See RES JUDICATA.

I. L. R. 30 Mad. 320

——ss. 13, 21—

See JURISDICTION.

I. L. R. 30 Mad. 126

MADRAS LAND REVENUE ASSESSMENT ACT (I OF 1876).

—*'Parties to alienation,' who are—Means only the parties to the particular alienation in respect of which the application is made.*—The 'parties to an alienation' whose concurrence is necessary for separate registration and sub-division by the Collector under Madras Act I of 1876, are the parties to the particular alienation in respect of which the application is made and not the parties to any transaction which may form a link in the alienor's title. The provisions of the Act are not confined to alienations by the registered proprietor only. COLLECTOR OF SALEM *v.* PEER BATCHA SAHIB (1906) I. L. R. 30 Mad. 106

MADRAS RENT RECOVERY ACT (VIII OF 1865).

—*Exchange of patta and muchilika not necessary between zamindar and inamdar to enable former to take proceedings under Act.*—No exchange of patta and muchilika is necessary to enable a zamindar to take summary proceedings against an inamdar as his tenant under Madras Act VIII of 1865, even when such inamdar has the *kudivaram* right in the land held by him. *Lakshmi Narayana Pantulu v. Venkatarayanam, I. L. R. 21 Mad. 116,* referred to. *Krishnama Charlu v. Renga Chariar, 16 M. L. J. 489,* referred to. ZAMINDAR OF CHALLAPALLI *v.* KUCHI JAGGAYYA (1907).

I. L. R. 30 Mad. 493

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*continued.*

——ss. 4, 11—

—*Res judicata—Contract to pay tax on improvements legal—Previous decision in summary suit binding in subsequent suits Appeal, powers of Court in—Appellate Court may by consent order trial on issues not raised in appeal.*—The effect of an appeal is to reopen the decree of the lower Court and it is competent to the Appellate Court on the agreement of parties to remand the case for trial on issues not raised in the memorandum of appeal. The decision of a Revenue Court as to the propriety of a particular condition in a patta, when such decision does not proceed on any considerations peculiar to the particular fasli, is *res judicata* between the parties in subsequent suits in the same Courts. *Venkatachalapati v. Krishna, I. L. R. 13 Mad. 287,* referred to. S. 11 of the Madras Rent Recovery Act contemplates rents being fixed by contract and it is only in the absence of contracts, express or implied, that resort is to be had to the methods of fixing rent specified in clauses 2 and 3 of the section. There is nothing in clause 4 to make contract illegal which would have the effect of giving the landlord a share in the benefit of the tenants' improvements. A *custom* to this effect may be opposed to the proviso to clause 4, but a contract is expressly authorised by the section and is not opposed to anything in the proviso. *Gopalasawmy Chetti v. Fisher, I. L. R. 28 Mad. 328,* referred to. NATESA GRAMANI *v.* VENKATARAMA REDDI (1907).

I. L. R. 30 Mad. 510

——s. 18.—

—*Seven days required by the section means seven clear days—Limitation Act (XV of 1877), Art. 91—Does not apply to defendants in possession.*—A defendant in possession is not precluded from setting up the invalidity of a sale, because his right to have it set aside was barred at the date of suit by Art. 91 of Sch. II to the Limitation Act. The seven days which, in fixing the day of sale under s. 18 of the Rent Recovery Act, must be allowed from the time of notice, are seven whole days, and not seven periods of 24 hours calculated from the hour of the day on which the notice was issued. *McQueen v. Jackson, 1903 | 2 K. B. 163,* referred to. RAMANASARI *v.* MUTHUSAWMI NAIK (1906).

I. L. R. 30 Mad. 248

——ss. 38 and 39—

—*Sale on excessive demand illegal—Institution of civil suit for rent after taking summary pro-*

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*continued.*

ceedings no bar to proceeding with the latter—Limitation Act (XV of 1877), Sch. II, Art. 12—No bar to defendant in possession pleading invalidity of sale.—Where notice of demand by the landlord under s. 39 of the Rent Recovery Act, claims a larger amount than is legally due from the tenant, a sale under the Act by the landlord for non-compliance with such excessive demand is illegal, and no subsequent alteration of the amount to the proper figure can validate such sale. *Pichuvayengar* v. *Oliver, I. L. R. 26 Mad. 261*, followed. Where the landlord institutes a civil suit for the rent after taking proceedings under the Act, such proceedings, if pleaded by defendant, will be a valid defence to the suit; but, *semble*, the mere institution of the suit will not make it illegal to proceed further with the summary proceedings. If the suit is allowed to proceed to judgment, the debt will merge in the decree and further summary proceedings will be illegal, but a sale before judgment will be valid. *Chancellor* v. *Webster, 9 T. L. R. 568*, referred to. A defendant in possession whose right to sue to set aside a sale is barred by Art. 12 of Sch. II of the Limitation Act, may set up the invalidity of such sale as a defence. *Lakshmi Dose* v. *Roop Laul, I. L. R. 30 Mad. 169*, referred to. VENKATACHALAPATHY AYYAR *v.* ROBERT FISCHER (1907).

I. L. R. 30 Mad. 444

——s. 39—

See MERGER. I. L. R. 30 Mad. 495

——ss. 41, 43, 69—

—*'Judgment'—Decision of Collector setting aside an order for ejectment under s. 41, is a 'judgment' and appealable as such.*—The term 'judgment' as used in Madras Act VIII of 1865 must be held to include all decisions of a Collector determining the rights of parties. Where a tenant, ordered to be evicted under s. 41 of the Act, applies to the Collector to set aside the order evicting him, the decision of the Collector on such application is a 'judgment' whether the application of the tenant is considered as a plaint in a summary suit to set aside the improper eviction or as an appeal under s. 43 or not, and an appeal lies against such judgment under s. 69 of the Rent Recovery Act Such right of appeal exists in favour of the landholder as well as of the tenant. *Madai Thalavoy Kummarasamy Mudaliyar* v. *Nallakannu Tevan, 5 Mad. H. C. 289*, not approved DONTABAJU SUBBARAYUDU *v.* NEKKALAPUDI LINGAYYA (1907).

I. L. R. 30 Mad. 473

——s. 85—

—*S. 85 empowers receivers to sue under the Act and also makes them liable to be sued without leave of Court.*—A receiver appointed by Court is a public officer holding lands in attachment within the meaning of s 85 of Madras Act VIII of 1865. The section imposes on him the duty of granting pattas to tenants and the liability to be sued under the Act for failure to do so. No leave of Court is necessary to enforce the statutory right of suing such receiver conferred by the section. RECEIVER OF AMMAYYANAIKANUR ZAMIN *v.* SUPPAN CHETTY (1907). . . . I. L. R. 30 Mad. 505

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*concluded.*

MADRAS REVENUE RECOVERY ACT (II OF 1864).

——s. 35—

—*Mortgagor, or incumbrancer—Unregistered owner not bound to pay the revenue—Contract Act (IX of 1872), s. 69—Money voluntarily paid cannot be recovered back unless the party for whom such payment is made is bound to pay it—Applies only where party paying is tenant.*—An action to recover money paid is not maintainable under s. 69 of the Indian Contract Act, unless the person from whom it is sought to be recovered was bound to pay it. On this point the law under s. 69 of the Indian Contract Act is the same as the English Law. *Bonner* v. *Tottenham and Edmonton Permanent Investment Building Society*, [*1899*] *1 Q. B. 161*, referred to. The revenue due on land owned by one who is not the registered holder is not money which such owner is bound to pay under the Revenue Recovery Act, though it may be to his interest to do so and the registered holder voluntarily paying such revenue cannot recover it under s. 69 of the Contract Act. Neither can he recover it under s. 35 of the Revenue Recovery Act unless he is a tenant, mortgagor or incumbrancer of such land. BOJA SELLAPPA REDDY *v.* VEIDHACHALA REDDY (1906).

I. L. R. 30 Mad. 35

——s. 59—

—*Regulation VII of 1828—Cause of action to set aside sale under s. 59 arises when sale is confirmed and not from date of Collector's order on revision.*—The period of six months allowed for suits to set aside sales under s. 59 of the Madras Act II of 1864 must be calculated from the date when the sale is confirmed and not from the date when the Collector on revision under Regulation VII of 1828 passes his final order. The party is aggrieved when the sale is confirmed and the fact that it was open to him to move the Collector does not postpone his cause of action. *Sabapathy Chetty* v. *Rengappa Naicken, I. L. R. 26 Mad. 495*, distinguished. CHINNAMMAL ACHI *v.* SAMINATHA MALAVARAYAN (1907).

I. L. R. 30 Mad. 367

MADRAS REGULATION (V OF 1804) AS AMENDED BY ACT IV OF 1899.

——s. 35—

—*Rules 7, 9 of rules framed under s. 35—Procedure when Government rescinds notification after reference to Civil Court.*—Where the Collector, to whom a decree has been transferred for execution by virtue of a notification by Government under s. 35 of the Amended Regulation V of 1804, makes a refer-

MADRAS REGULATION (V OF 1804) AS AMENDED BY ACT IV OF 1899 —*concluded.*

ence to the Civil Court under Rule 7 of the rules framed under the section and the Civil Court passes a decision in such reference and pending an appeal to the High Court against such decision, the Government rescinds the notification:—*Held*, that the proper course to be adopted by the High Court was to set aside the decision of the lower Court, without prejudice to the parties raising the question involved in the reference in execution proceedings in the Civil Courts. PULABAIYAGARI MUNISAMY CHETTY *v.* THE RAJAH OF KARVETNAGAR (1906).

I. L. R. 30 Mad. 193

MAGISTRATE, SUBORDINATION OF.

—*Additional District Magistrate and District Magistrate—Criminal Procedure Code (Act V of 1898), ss. 10 (2), 12, 528.*—S. 12 of the Criminal Procedure Code does not make an Additional District Magistrate subordinate to the District Magistrate, and the latter cannot exercise the powers under s. 528 in respect of such Magistrates. The Code does not define the relation between a District Magistrate and an Additional District Magistrate. PRAKAS CHUNDER DUTT *v.* EMPEROR (1907) . **I. L. R. 34 Calc. 918**

MAHARAJA OF BENARES, FAMILY DOMAINS OF.

—*Court established by authority of Governor-General—Kondh, Court of Native Commissioner of—Benares Family Domains Regulation (VII of 1828)—Benares Family Domains Act (XIV of 1881)—Civil Procedure Code (Act XIV of 1882), ss. 229, 229B.*—The family domains of the Maharaja of Benares are situated within British India as defined in Act X of 1897, s. 3, cl. 7, and s. 4, cl. 1; and the Court of the Native Commissioner or Subordinate Judge of Kondh within those domains, established under Regulation VII of 1828 amended by Act XIV of 1881, is a Court established by the authority of the Governor-General in Council; consequently neither s. 229 nor s. 229B of the Code of Civil Procedure applies to the execution of decree passed by it. PRADHU NARAIN SINGH *v.* SALIGRAM SINGH (1907).

I. L. R. 34 Calc. 576

MAHOMEDANS.

See PARTITION ACT (IV OF 1893), S. 4.

I. L. R. 29 All. 308

MAHOMEDAN LAW.

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I. L. R. 29 All. 10

MAHOMEDAN LAW—DOWER.

—*Shias—Succession—Widow—Rights of widow in possession in lieu of dower.*—A Mahomedan widow in possession of immovable property of her deceased husband in lieu of her dower has only a lien on the property to secure payment of the dower debt: she has no transferable interest in the property. *Mussummat Bebee Bachun* v. *Sheikh Hamid Hossein, 14 Moo. I. A. 377*, and *Hadi Ali* v. *Akbar Ali, I. L. R. 20 All. 262*, referred to. MUZAFFAR ALI KHAN *v.* PARBATI (1907).

I. L. R. 29 All. 640

MAHOMEDAN LAW—ENDOWMENT.

1.—*Religious trust—Mutwalli—Right of a female to be appointed mutwalli—Consent decree giving preference to lineal descendants of settlor—Senior lineal descendant a woman and a Babee—Unorthodox Mahomedan—Discretion of Court in selection of trustee under decree giving it power to appoint.*—By Mahomedan law there is no legal prohibition against a woman holding a mutwalliship, when the trust by its nature involves no spiritual duties such as a woman could not properly discharge in person or by deputy. A consent decree made by the High Court at Calcutta on appeal from a decision of the Recorder of Rangoon directed that the trustee of a Mahomedan religious trust should retire, "and that a new trustee be appointed in his place by the Chief Court of Lower Burma, preference in such appointment being given to the lineal descendants of the settlor." The settlor was a Mahomedan of the Shiah sect. His eldest, and only really eligible, lineal descendant was his daughter, the appellant, who claimed the right to be appointed. She, however, was not an orthodox Mahomedan, but a Babee. The Judge exercising Original Civil jurisdiction in the Chief Court found that she was not disqualified either by her sex or on the ground that she was a Babee, and appointed her mutwalli of the trust. The Judges on the appellate side of the Chief Court, while agreeing with the first Court that the lady was not disqualified, held that in selecting a trustee they had a discretion, which they exercised by declining to appoint the appellant, who (they held) could only discharge many of the duties of the trust by deputy, and as a Babee would not take such interest in the religious observances of the Shiah School as one of the Shiah sect. *Held*, by the Judicial Committee, that the Chief Court had a discretion in the appoint-

MAHOMEDAN LAW—ENDOWMENT—*concluded.*

ment of a trustee, which under the circumstances they had rightly exercised. *Held*, also, that no absolute right of the lineal descendants of the settlor to be appointed was established by the authorities cited in the present case, in which the settlor had not prescribed any line of devolution. SHAHOO BANOO *v.* AGA MAHOMED JAFFER BINDANEEM (1906).

I. L. R. 34 Calc. 118; L. R. 34 I. A. 46

2.—*Wakf—Statement in a will that the testator had at a former time given away or set apart property to charity—Not a testamentary devise—Absence of actual delivery—Reasonably clear intention.*—A mental act although afterwards sufficiently expressed in conduct will not, unless clothed in appropriate words, create a *wakf*. *Per* CURIAM.—We do not think that a mere statement in a will of some gift in the past can be referred back to the date still undetermined, when that gift is afterwards alleged to have been made, or that such a narrative statement can in any view be an adequate substitute for the oral declaration of dedication to God, which the Mahomedan law appears to us imperatively to require, synchronously with the act of dedication itself. There is a plain distinction between giving in charity and declaring that one has given in charity. And for the purpose of fixing the origin of the *wakf*, if there was a *wakf* at all, the mere statement in a will that at some past date the testator had set apart such and such funds for charitable objects is of comparatively slight value. Where there has been no actual delivery, a reasonably clear declaration is necessary to create a *wakf*. BANUBI *v.* NARSINGRAO (1906) . **I. L. R. 31 Bom. 250**

MAHOMEDAN LAW—GIFT.

1.—*Mushâa—Undivided shares in land—Shares in Companies—Validity of Gift.*—Assuming that the law of Mushâa, which prohibits gifts of undivided shares of divisible property, applies to the succession of Mahomedans who reside in Rangoon, it does not apply to a gift by will of undivided shares in freehold land and of shares in Companies. *Mumtaz Ahmad* v. *Zubaida Jan, L. R. 16 I. A. 205*, followed. Concurrent findings that deeds of gift were not executed by the donor under pressure of the sense of imminent death upheld and approved. IBRAHIM GOOLAM ARIFF *v.* SAIBOO (1907).

L. R. 34 I. A. 167; 11 C. W. N. 973; I. L. R. 35 Calc. 1

2.—*Nature of possession necessary to constitute a valid gift—Residence of donor—Mother with daughter—Donee does not make gift invalid.*—Under Mahomedan law, to constitute a valid gift, possession must pass to the donee. Where a house and lands were given as a gift by a Mahomedan mother to her daughter and the daughter was put in exclusive possession of the lands and her title to both properties was perfected by mutation of names in the register, the mere fact that the mother continued to reside with her daughter, will not constitute a non-delivery of possession which will invalidate the gift. *Bava Sahib* v. *Mahomed, I. L. R. 19 Mad. 343*, distinguished. *Humira Bibi* v. *Najmun-Nissa Bibi, I. L. R. 28 All. 147*, followed. KANDATH VEETTIL BAVA *v.* MUSALIAM VEETTIL PAKRUKUTTI (1907) . **I. L. R. 30 Mad. 305**

3.—*Gift by registered instrument not valid if unaccompanied by delivery of possession.*—The Mahomedan law is applicable to gifts between Mahomedans, even when effected by registered instrument, and such a gift will be invalid unless the requirements of Mahomedan law as to possession are complied with. *Chaudhri Mehdi Hasan* v. *Muhammad Hussan, L. R. 33 I. A. 68, 75*, followed. *Mogulsha* v. *Mahamad Sahib, I. L. R. 11 Bom. 517*, referred to. *Alabi Koya* v. *Mussa Koya, I. L. R. 24 Mad. 513*, not followed. VAHAZULLAH SAHIB *v.* BOYAPATI NAGAYYA (1907).

I. L. R. 30 Mad. 519

MAHOMEDAN LAW—GUARDIAN.

1.—*Guardians and Wards Act (VIII of 1890), s. 10—Guardian and minor—Mahomedan law—Paternal uncle or mother.*—The paternal uncle has no legal right under the Mahomedan law to the guardianship of the property of his minor nephews and nieces superior to that of their mother. *Shaikh Alimodeen Moallen* v. *Syfoora Bibee, 6 W. R. M. R. 125*, referred to. ALIM-ULLAH KHAN *v.* ABADI BEGAM (1906) . . . **I. L. R. 29 All. 10**

2.—*De facto guardian, power of, over minor's property—Transfer of Property Act (IV of 1882), s. 51—Equitable principle embodied in s. 51 not opposed to Mahomedan law.*—Under Mahomedan law, a sale by the mother, as *de facto* guardian of her minor son, of the property of such minor is not binding on him. The rule of equity embodied in s. 51 of the Transfer of Property Act is not opposed to any principle of Mahomedan law, and s. 2 does not preclude its application in cases decided under the Mahomedan law. What constitutes good faith within the meaning of s. 51 is a question of fact; and a person may act in good faith, though he acts under a mistake of law. DURGOZI ROW *v.* FAKEER SAHIB (1906).

I. L. R. 30 Mad. 197

3.—*Minor's property—Power of de facto guardian to alienate—Mother, alienation by—Validity—Legal necessity—Benefit—Rule of justice, equity and good conscience*—Under Mahomedan law, a *de facto* guardian such as the mother can alienate her minor children's property for legal necessity and for their benefit. *Myna Bibi* v. *Banku Behary Biswas, I. L. R. 21 Calc. 473: 6 C. W. N. 667; Hurbai* v. *Hiraji Byramji Shanja, I. L. R. 20 Bom. 116*, and *Bhut Nath Dey* v. *Ahmed Hossain, I. L. R. 11 Calc. 417*, distinguished. *Hasan Ali* v. *Mehdi Husain, I. L. R. 1 All. 533; Majdian* v. *Ram Narain, I. L. R. 26 All. 22*, and *Syedun* v. *Velayet Ali Khan, 17 W. R. 239*, referred to. MUKSHI MAHOMED HOSSAIN *v.* BASED SHEIKH (1906) . . **11 C. W. N. 71**

MAHOMEDAN LAW—GUARDIAN—*concluded.*

4.—*Guardian of property—Mother's power to sell her minor children's estate—Alienation for benefit of the minor.*—Although according to Mahomedan law the mother of a minor is not guardian of his property yet, if she deals with the minor's estate, her acts, if they are for the benefit of the minor, should be upheld. *Moyna Bibi* v. *Banku Behari Biswas, I. L. R. 29 Calc. 473,* referred to and distinguished. MAFAZZAL HOSAIN *v.* BASID SHEIKH (1906) . . **I. L. R. 34 Calc. 36**

5.—*Guardian of property—Mother's power to sell her minor children's estate—Alienation by de facto guardian for the benefit of the minor.*—Although under the Mahomedan law a mother is not the legal guardian of the property of her minor children, yet, when she, acting as the *de facto* guardian, purports to deal with the property, the transaction, if it is for the benefit of the minor, ought to stand, in the absence of fraud or any other element of that nature. *Mafazzal Hosain* v. *Basid Sheikh, I. L. R. 34 Calc. 36 : 4 C. L. J. 485 ; 11 C. W. N. 71 ; Hasan Ali* v. *Mehdi Husain, I L. R. 1 All. 533,* and *Majidan* v. *Ram Narain, I. L. R. 26 All. 22,* approved. *Moyna Bibi* v. *Banku Behari Biswas, I. L. R. 29 Calc. 473 ; Bhutnath Dey* v. *Ahmed Hosain, I. L. R. 11 Calc. 417,* and *Hurbai* v. *Hiraji Byramji Shanja, I. L. R. 20 Bom. 116,* referred to. RAM CHARAN SANYAL *v.* ANUKUL CHANDRA ACHARJYA (1906). **I. L. R. 34 Calc. 65**

MAHOMEDAN LAW—INHERITANCE.

1.—*Spes successionis—Non-transferable and non-releasable—Transfer of Property Act (IV of 1882), s. 6 (a)—Deeds executed by pardanashin lady—Burden of proof.*—The chance of an heir-apparent succeeding to an estate is under Mahomedan law neither transferable or releasable. It is only by an application of the principle that equity considers that done which ought to be done that such a chance can, if at all, be bound. It was not intended by s. 6 (*a*) of the Transfer of Property Act to establish and perpetuate the distinction between that which according to the phraseology of English lawyers is assignable in law and that which is assignable in equity. In the case of deeds executed by *pardanashin* ladies, it is requisite that those who rely on them should satisfy the Court that they had been explained to and understood by those who executed them. *Sudisht Lal* v. *Mussummat Sheobarat Koer, L. R. 8 I. A. 39, 43 ; Shambati Koeri* v. *Jago Bibi, I. L. R. 29 Calc. 749,* followed. SUMSUDDIN *v.* ABDUL HUSEIN (1906). **I. L. R. 31 Bom. 165**

2.—*Shias—Succession—Childless widow.*—Under the Imamia law a widow, if she has no issue alive at her husband's death, does not inherit any of her husband's immovable property. MUZAFFAR ALI KHAN *v.* PARBATI (1907) . **I. L. R. 29 All. 640**

MAHOMEDAN LAW—MARZ-UL-MAUT.

—*Divorce—Marz-ul-maut—Death-bed illness, tests for determining.*—The tests to determine whether illness is to be regarded as death-bed illness (Marz-ul-maut) under Mahomedan law are:—(i) Proximate danger of death so that there is a preponderance of *khauf* or apprehension that at the given time death must be more probable than life, (ii) There must be some degree of subjective apprehension of death in the mind of the sick person, (iii) There must be external indicia, chief among which would be the inability to attend to ordinary avocations. *Sarabai* v. *Rabiabai, I. L. R. 30 Bom. 537,* followed. RASHID *v.* SHERBANOO (1907). **I. L. R. 31 Bom. 264**

MAHOMEDAN LAW—MARZ-UL-MAUT—*concluded.*

MAHOMEDAN LAW—MINOR.

See MAHOMEDAN LAW—GUARDIAN.

MAHOMEDAN LAW—PURCHASE OF ANCESTRAL PROPERTY.

—*Principles applicable to purchase.*—The principles applicable to a purchase by one member of a joint Hindu family from another are not applicable to Mahomedans. MAHAMAD *v.* HASAN (1906). **I. L. R. 31 Bom. 143**

MAHOMEDAN LAW—RELINQUISHMENT.

—*Relinquishment of share—Voluntary settlement—Document whereby heirs give up their rights in the property in favour of one heir—Deed supported by valuable consideration—Onus of proof—Power of revocation in a voluntary deed.*—*O*, a Mahomedan, died leaving him surviving his widow *A* and a daughter *Z*. *Z* died leaving her surviving two sons, two daughters and her husband. After her death, her mother *A.* and her husband *A. H. M.* arrived at a settlement and executed a document whereby they relinquished their share in the property of *O* in favour of the minor sons of *Z*. *A* then brought a suit to set aside the document alleging that it was a voluntary settlement: *Held,* that the document was not a voluntary settlement but was a transaction supported by valuable consideration, inasmuch as the relinquishment by one was consideration for the relinquishment by the other. *Mahammadunissa Begum* v. *J. C. Bachelor, I. L. R. 29 Bom. 428,* followed. ASHIDBAI *v.* ABDULLA (1906) . . . . **I. L. R. 31 Bom. 271**

MAHOMEDAN LAW—RESTITUTION OF CONJUGAL RIGHTS.

1.—*Suit for restitution of conjugal rights—Limitation Act (XV of 1877), s. 23, Sch. II, Arts. 35, 120.*—A suit for restitution of conjugal rights between Mahomedans is governed by Art. 35 of the Second Schedule of the Limitation Act, if at the time of the demand and refusal the wife or husband was of full age and sound mind; otherwise, Art. 120, Schedule

MAHOMEDAN LAW—RESTITUTION OF CONJUGAL RIGHTS—*concluded.*

II of the Limitation Act would apply to such a suit. S. 23 of the Limitation Act does not apply to a suit for restitution of conjugal rights. *Dhanjibhoy Bomanji* v. *Hirabai, I. L. R. 25 Bom. 644*, approved of. ASIRUNNESSA KHATUN *v.* BUZLOO MEAH (1906) . . I. L. R. 34 Calc. 79

2.—*Suit for restitution of conjugal rights—Legal cruelty—Other misconduct of the plaintiff pleaded as a defence to the suit.*—In a suit for restitution of conjugal rights, the parties being Mahomedans, if the defendant raises a plea of legal cruelty, the facts to be proved to establish such a plea are similar to those which must be proved to establish a similar plea under the English law. *Moonshee Buzloor Ruheem* v. *Shumsoonnissa Begum, 11 Moo. I. A., 551*, referred to. But in a suit for restitution brought by the husband misconduct on the plaintiff falling short of legal cruelty may be a ground for the Court refusing relief. Thus where the plaintiff apparently only brought his suit on account of his wife having filed another suit against the plaintiff's father, and in his plaint accused his wife of immorality of the most serious kind, a charge which he totally failed to substantiate, it was *held* that the Court would be justified in refusing him relief. *Mackenzie* v. *Mackenzie*, [*1895*] *A. C. 384*, referred to. On the general facts of the case also it was found that the defendant had reasonable grounds for believing that her health and safety would be endangered if she returned to her husband's house, which was situated in a Native State. HUSAINI BEGAM *v.* MUHAMMAD RUSTAM ALI KHAN (1906).
I. L. R. 29 All. 222

MAHOMEDAN LAW—WIDOW.

See MAHOMEDAN LAW—DOWER.
I. L. R. 29 All. 640

MAIDEN.

See HINDU LAW. I. L. R. 31 Bom. 495

MAINTENANCE.

See FUTURE MAINTENANCE.

See HINDU LAW.

See PENSION. . I. L. R. 30 Mad. 266

See PENSIONS ACT. I. L. R. 31 Bom. 512

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See JURISDICTION OF CIVIL COURTS.
I. L. R. 30 Mad. 400

MAJORITY ACT (IX OF 1875).

——s. 3—

See GUARDIAN AND WARD.
I. L. R. 29 All. 672

MAJORITY ACT (IX OF 1875)—*concluded.*

See GUARDIANS AND WARDS ACT.
I. L. R. 31 Bom. 590

1.—*Guardian—Minor—Order making appointment of guardian—Certificate of guardianship not issued—Act XX of 1864—Period of minority.*—Where a person obtains an order for a certificate of guardianship of a minor under the provisions of Act XX of 1864, the minor is deemed to have attained his majority when he shall have completed his age of 21 years by virtue of s. 3 of the Indian Majority Act (IX of 1875). It is not necessary for the purposes of the section that any formal certificate of guardianship in pursuance of such order should be obtained. SHIVRAM *v.* KRISHNABAI (1906).
I. L. R. 31 Bom. 80

2.—*Power of Chamber Judge to alter, vary, modify or set aside orders made by his predecessor in Chamber under the Guardians and Wards Act—Period of minority on vacating of such orders does not extend to 20 years—Guardians and Wards Act (VIII of 1890), ss. 47, 48.*—If an order is made under the Guardians and Wards Act and such order is subsequently set aside the period of minority is not extended to 21 years under s. 3 of the Indian Majority Act. NAGARDAS *v.* ANANDRAO (1907). . . . I. L. R. 31 Bom. 590

MALABAR LAW.

See COURT FEES ACT, s. 17.
I. L. R. 30 Mad. 61

See UBHAYAPATTOM.

— Otti-holder's right of pre-emption, nature of—Such right a right of election and not a right to veto—Right of pre-emption cannot be enforced by counter-claim by otti-holder in transferee's suit for redemption—Variation between pleading and proof—Plaintiff failing to prove plaint mortgage may be given a decree on mortgage admitted by defendant.—The right of pre-emption which an otti-holder has by custom under Malabar law is only a right to elect whether he will purchase or not and not a right to veto a transfer by the janmi, without his knowledge. The otti-holder's right cannot be pleaded as a bar to a transferee's right to redeem, without an offer to purchase that right. Such an offer by the otti-holder cannot, in this country, be entertained as a counter-claim in a suit by the transferee of the janmi right for redemption, but must be enforced by a separate suit. *Kurri Veerareddi* v. *Kurri Bapireddi, I. L. R. 29 Mad. 339*, followed. Case law on the otti-holder's right of pre-emption discussed. Where in a suit for redemption, the plaintiff fails to prove the mortgage set up by him, the Court may allow the plaintiff to redeem on the basis of a different mortgage, under which the defendant claims to hold. KADAKAMVALLI SANKARAN MUSSAD *v.* MOKKATH USSAIN HAJI (1907) . . . I. L. R. 30 Mad. 388

MALICE.

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See DEFAMATION.
I. L. R. 31 Bom. 293

See MUNICIPALITY.
I. L. R. 31 Bom. 37

See TRADE-MARK.
I. L. R. 34 Calc. 495

"MALIKANA AND DUSTURAT" GRANT.

—Malikana and dusturat grants made before the Permanent Settlement—Nature and incidence—Liability of Government—Lakhiraj jaigirs—Resumption.—In the Behar districts, the payment of *malikana* dates from a period long anterior to that of the Permanent Settlement. The Permanent Settlement put an end to the system of paying *malikana* to proprietors except in those cases where they declined the terms offered to them at the settlement and preferred to remain out of possession. But previous to the Permanent Settlement, large tracts of land in Behar had been settled by Government with *lakhirajdars*, the proprietors being compensated by permanent hereditary pensionary allowances, styled *malikana* or *dusturat* and *malikana* payable out of the jaigirs. When subsequently these jaigirs were resumed the Government as occupying the position of the jaigirdars became liable for the payment of the *malikana*. When the lands were resettled with the jaigirdars themselves the *malikana* previously due from them were added to the Government revenue with which they were assessed, and the maliks were paid by the Collector out of the treasury. When, on the other hand, the resumed jaigirs were settled with persons other than the jaigirdars, the land settled still remained liable for the payment of the *malikana*, such *malikana* being payable either out of the *malikana* as assessed under s. 3 of Regulation II of 1819 and s. 5 of Regulation VII of 1822 or added as an additional sum payable by the settlement-holder over and above the revenue and *malikana* so assessed. Government subjected itself to loss when in resettling the lands it omitted to make provisions for the recovery of the *malikana* from the settlement holders in the above manner. If, however, the lands by any process of transfer or merger came into the possession of the proprietor the *malikana* allowance or a rateable share of it came to an end, and the Government on re-settlement after resumption became entitled to be relieved of their liability *pro tanto*. RAMESHWAR SINGH *v.* THE SECRETARY OF STATE FOR INDIA (1907) . 11 C. W. N. 448

MAMLATDARS' COURT.

See JURISDICTION OF CIVIL COURTS.

MAMLATDARS' COURTS ACT (BOM. III OF 1876).

—Possessory suit—Suit against Collector in his official capacity—Mamlatdars' jurisdiction to entertain the suit.—Mamlatdars empowered by the Mamlatdars' Courts Act (Bom. Act III of 1876) cannot entertain and decide suits to which the Collector is a party. The ruling in *Balvantrao* v. *Sprott*, *I. L. R. 23 Bom. 761*, qualified. MOTILAL *v.* THE COLLECTOR OF AHMEDABAD (1906).
I. L. R. 31 Bom. 86

MAMLATDARS' COURTS ACT (BOM. III of 1876)—*concluded.*

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—Mamlatdars' Courts Act (Bom. Act III of 1876), s. 4—Mamlatdars' Court Act (Bom. II of 1906), s. 5—Suit for possession of a house situate within a town—Jurisdiction—Act of procedure—Repealed statute.—A suit for the recovery of possession of a house situate within a town was instituted in the Court of a Mamlatdar while the Mamlatdars' Courts Act (Bom. Act III of 1876) was in force, but before the suit was finally decided that Act was repealed and the Mamlatdars' Courts Act (Bom. Act II of 1906) had come into operation. *Held*, that the Mamlatdar had no jurisdiction to decide the suit. *Per* CURIAM: The repealed statute is, with regard to any further operation, as if it had never existed. *Regina* v. *Denton*, *18 Q. B. 761*, followed and applied. VAJECHAND *v.* NANDRAM (1907).
I. L. R. 31 Bom. 545

MANDAMUS.

See SPECIFIC RELIEF ACT.
I. L. R. 31 Bom. 319

MARKET.

See JOINT TRIAL. . 11 C. W. N. 1128

1.—*Right of zamindar to establish a market on his own land—Regulation No. XXVII of 1793, Regulation No. VII of 1822, s. 9.*—There is no legal objection to the holding by any person of a "hat" or market whenever and wherever he may please, provided that he does so on his own land and in such a way as not to be a nuisance to neighbouring landholders who have equal rights with him. *Kedarnath* v. *Raghunath*, *N.-W. P. H. C. 104*; *Sheikh Bisharut Ally* v. *Seetul Misser*, *N.-W. P. H. C. 40*; *Metta Sahoo* v. *Sheikh Surwur Ali*, *14 S. D. A., N.-W. P., 439*, and *Bhinuk Chowdhree* v. *The Collector of Jaunpore*, *N-W. P. H. C. 271*, referred to. SUKHDEO PRASAD *v.* NIHAL CHAND (1907).
I. L. R. 29 All. 740

2.—*Rights of owner of market—Foreign goods, sale of—Law for carrying on of a market.*—In this country there is no special law for regulating the establishment and the carrying on of a market. The owner of land may establish a market wherever on his own land and whenever he desires to do, provided he does not commit an offence involving disturbance of public peace by establishing the market close to another existing market. The proprietor of a market may regulate the sales and the

MARKET—*concluded.*

conduct of stall-keepers provided his conduct does not disturb public tranquillity, or he does not commit an offence punishable by law. The proprietor has the right to prevent itinerant stall-keepers, but not permanent stall-keepers from selling any article he may choose to prevent the sale of. *Raj Kumar Chuckerbutty* v. *The Emperor, 11 C. W. N. 28*, followed. Itinerant stall-keepers who are mere licensees, are entirely under the control of the owner of the market. These rights of the proprietor can be exercised by the *ijaradar* of the market during the term of his *ijarah*. Where the *ijaradar* of a market with a view to prevent the sale of foreign articles used force and caused hurt to certain itinerant stall-keepers : *Held*, that the *ijaradar* exceeded his right under the law and was punishable. But he could not be bound down to keep the peace, as an order under s. 106, Criminal Procedure Code, would practically prevent him from exercising his legal rights. NANDA KUMAR SIRKAR *v.* THE EMPEROR (1907). . . . . **11 C. W. N. 1128**

MARKET VALUE.

See COMPENSATION.
I. L. R. 34 Calc. 599

MARRIAGE SETTLEMENT.

See CONTRACT. **I. L. R. 29 All. 151**

MARRIED WOMAN.

See GUARDIAN AD LITEM.
I. L. R. 29 All. 728

——property of—

—Civil Procedure Code (Act XIV of 1882), s. 266, and Small Cause Court Rule 220—Attachment of married woman's property subject to restraint on anticipation—S. 10, Transfer of Property Act, Act IV of 1882 - S. 8, Married Woman's Property Act, Act III of 1874—Property of married woman subject to restraint on anticipation not attachable in execution of a decree under s. 8 of the Married Woman's Property Act.—The income of property belonging to a married woman subject to a restraint on anticipation, accruing due after the date of a decree against such married woman's separate property under s. 8 of the Married Woman's Property Act, is not liable to attachment in execution of such decree under s. 266 of the Code of Civil Procedure or under Rule 220 of the Rules of the Presidency Court of Small Causes. S. 8 of the Married Woman's Property Act does not affect the doctrine of restraint on anticipation. *Hippolite* v. *Stuart, I. L. R. 12 Calc. 522*, dissented from. *In re Mantel and Mantel, I. L. R. 18 Mad. 19*, followed. S. 10 of the Transfer of Property Act recognises and renders enforceable conditions in restraint of anticipation and is not affected by s. 8 of the Married Woman's Property Act. A decree under s. 8 of the latter Act against the separate property of a married woman cannot be considered as passed against property which she is restrained from anticipating. S. 266 of the Code of Civil Procedure is only a rule of procedure, and is not exhaustive. It cannot be construed as authorising the attachment of property which, by the rule of substantive law embodied in s. 10 of the Transfer of Property Act, is incapable of being transferred or charged by the beneficiary. GOUDOIN *v.* VENCATESA MOODALLY (1907). **I. L. R. 30 Mad. 378**

MARRIED WOMAN—*concluded.*

MARRIED WOMAN'S PROPERTY ACT (III OF 1874).

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See MARRIED WOMAN, PROPERTY OF.
I. L. R. 30 Mad. 378

MATRIMONIAL OFFENCES.

See RESTITUTION OF CONJUGAL RIGHTS.
I. L. R. 34 Calc. 971

MARZ-UL-MAUT.

See MAHOMEDAN LAW.

—Mahomedan Law—Divorce—Death-bed illness, tests for determining.—The tests to determine whether illness is to be regarded as death-bed illness (Marz-ul-maut) under Mahomedan Law are:—(i) Proximate danger of death so that there is a preponderance of *khauf* or apprehension that at the given time death must be more probable than life. (ii) There must be some degree of subjective apprehension of death in the mind of the sick person. (iii) There must be external indicia, chief among which would be the inability to attend to ordinary avocations. *Sarabai* v. *Rabiabai, I. L. R. 30 Bom. 537*, followed. RASHID *v.* SHEEBANOO (1907).
I. L. R. 31 Bom. 264

MASTER AND SERVANT.

—Agreement with Native of India to depart out of India by sea to work as an artisan—Agreement made without the permission of the Protector of Emigrants – Liability of master for criminal acts done by servant on the master's behalf—Master liable for agreements entered into on his behalf by his servant in violation of s. 111—Indian Emigration Act (XXI of 1883, amended by Act X of 1902), ss. 6, 107, 111.—Where penal statute has been infringed by servants, and criminal proceedings are taken against the master although it lies upon the prosecutor to establish the master's liability, yet the question whether he is liable turns necessarily upon what is the true construction to be placed upon the statute. The statute should be construed, not merely with reference to its language, but also its subject-matter and object. EMPEROR *v.* JEEVANJI (1907).
I. L. R. 31 Bom. 611

MATE'S RECEIPT.

See CONTRACT. I. L. R. 34 Calc. 173

MEDICAL ATTENDANCE, FEES FOR.

See CIVIL PROCEDURE CODE, s. 43.

—Suit to recover fees for medical attendance—Fees partly secured by a promissory note—Separate suits upon the promissory note and for the unsecured balance—Latter suit barred.—A, a doctor, agreed with *B* to accompany *B* to Hardwar as his medical attendant on a fee of R100 a day. After seven days *B* gave *A* a promissory note for R700 representing seven days' fees. *B*, who was a vakil, also promised to assist *A* professionally in certain litigation. *B*, however, died before he could fulfil his agreement to render professional services. *A* sued *B*'s son upon the promissory note first, and subsequently in a separate suit for the balance of his fees for attendance at Hardwar under the alleged agreement and for fees for later attendance at Benares. *Held*, that the second suit was barred by the provisions of s. 43 of the Code of Civil Procedure so far as the fees for attendance at Hardwar were concerned, though not in respect of the other fees claimed. PEEONATH MUKERJI *v.* BISHNATH PRASAD (1906). . . I. L. R. 29 All. 256

MELA, PROFITS OF.

See CESS, ASSESSMENT OF.
11 C. W. N. 1053; I. L. R. 35 Calc. 82

MELWARAM.

—Civil Procedure Code, s. 266—A hereditary allowance out of melwaram of lands attachable.—A hereditary grant of an allowance of paddy out of the melwaram of certain land is not a right to future maintenance such as is exempted from attachment under s. 266 of the Code of Civil Procedure. VAIDYANATHA SASTRIAL *v* EGGIA VENKATARAMA DIKSHITAR (1907) . . I. L. R. 30 Mad. 279

MEMORANDUM OF APPEAL.

See LIMITATION, PLEA OF.
I. L. R. 34 Calc. 941

MERCHANDISE MARKS ACT (IV OF 1889).

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See DETENTION OF GOODS.
I. L. R. 34 Calc. 511

MERGER.

See LANDLORD AND TENANT.
I. L. R. 34 Calc. 104

—Decree in civil suit for rent bars subsequent summary proceedings under Rent Recovery Act by distress—Rent Recovery Act (Madras Act VIII of 1865), s. 39.—A cause of action merges by reason of the judgment of a Court of record in a suit brought on such cause of action and without the judgment being satisfied. *King* v. *Hoare, 13 M. & W. 494*, referred to. A claim for rent is a single cause of action although it may be recovered either by distress or by suit, and when the landlord sues for the rent in a Civil Court, such claim merges in the judgment passed in such suit and can no longer be distrained for under the Rent Recovery Act. CHINNAPPA ROWTHAN *v.* FISCHER (1907).
I. L. R. 30 Mad. 495

MESNE PROFITS.

See CIVIL PROCEDURE CODE.
I. L. R. 31 Bom. 527

See COURT FEES ACT (VII OF 1870), S. 2.
I. L. R. 30 Mad. 32

MINERAL RIGHTS.

—Mukarari lease—Mines and Minerals—Underground rights—Transfer of Property Act (IV of 1882), s. 108, cl. (o).—The grant of a mukarari lease of a whole mouza "*mai hak hukuk*" (with all rights) constitutes a contract giving permanently to the lessee all the lessor's rights in the lands leased, including the right to work minerals. *Sriram Chakravarti* v *Hari Narain Singh Deo, I. L. R. 33 Calc. 54*; *Shama Charan Nandi* v. *Abhiram Goswami, I. L. R. 33 Calc. 511*, referred to. *In re Purmandas Jeewandas, I. L. R. 7 Bom. 109, Prince Mahomed Bukhtyar Shah* v. *Rani Dhojamani, 2 C. L. J 20, Tituram Mukerji* v. *Cohen, I. L. R. 33 Calc. 203*, and *Girish Chandra Chando* v. *Sirish Chandra Das, 9 C. W. N. 255*, distinguished. MEGH LAL PANDEY *v.* RAJKUMAR THAKUR (1906).
I. L. R. 34 Calc. 358

MINES.

—Coal mines—Royalty—Whether royalty assessable both with road-cess and income-tax—"Owner" of mine Road-cess Act (Bengal Act IX of 1880), ss. 6, 72—Notice to Secretary of State—Waiver of notice.—An owner of mines (whether worked by himself or lessees) is liable to pay both income-tax and road-cess tax on the same net profits derived, or royalty received, by him from the mines. *Umed Rasul Shaha* v. *Anath Bandhu Chowdhuri, I. L. R. 28 Calc. 637*, distinguished. *Per* RAMPINI, *J.*—The word "owner" in s. 72 of the Road Cess Act (Bengal IX of 1880) is applicable to the proprietor of the land in which mines have been excavated and who receives a share of the profits in the form of royalty, and is not restricted to the actual worker

MINES—*concluded.*

or the lessee of the mines. *Per* MOOKERJEE, *J.*—The term "owner" in s. 72 of the Bengal Cess Act of 1880 is used in a limited sense; it means an owner, who is in possession of the mine or who has control over it, and does not include a person or body corporate, who merely receives a royalty. MANINDRA CHANDRA NANDI *v.* SECRETARY OF STATE FOR INDIA (1907).
I. L. R. 34 Calc. 257

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1. LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS.

1.—*Minor, right of, to contract—Mutuality—Specific performance of contract, right of minor to enforce.*—*Held* by the Full Bench that, if a contract is validly entered into on behalf of a minor and there is mutuality in such contract, it might be specifically enforced. It is difficult to lay down any general rule, but each case must depend upon its own particular circumstances. MIR SARWARJAN *v.* FAKHARUDDIN MAHOMED CHOWDHURY (1906).
I. L. R. 34 Calc. 163

2.—*Contract of sale and purchase—Minor, contract by guardian of—Specific performance—*

MINOR—*concluded.*

Personal liability.—*Held*, that the contract in this case which a guardian had entered into on behalf of a minor, can be specifically enforced. *Fatima Bibi* v. *Deb Nauth Saha, I. L. R. 20 Calc. 508*, dissented from. WOODROFFE, *J.*—Specific performance may be granted of a contract entered into by a guardian on behalf of a minor, if the contract be one which being within the guardian's power binds the minor. An agreement for sale and purchase entered into on behalf of a minor may be specifically enforced notwithstanding the fact that it involves a personal liability to pay the price if the agreement be carried out, and also damages in lieu of or in addition to specific performance if the agreement be broken. *Waghela Rajsanji* v. *Sheik Masludin, L. R. 14 I. A. 89*, referred to. MIR SARWAR-JAN *v.* FAKHRADDIN MAHOMED CHOUDRY (1906). **11 C.W. N. 207**

2. COMPROMISE DECREE.

3.—*Minor—Compromise decree—Guardian—Practice—Suit to set aside compromise decree on ground other than fraud—Right of suit—Compromise filed without consent of guardian—Sanction of Court.*—A suit was instituted for a declaration that a compromise decree made against the plaintiffs in a previous suit, when they were minors, was void on the ground that the petition of compromise had been put in by the pleader engaged by their guardian in that suit against the express wishes of the latter. *Held*, that the suit would lie and that the plaintiffs were entitled to show by evidence that the compromise was filed without the consent of their guardian and was therefore not binding upon them, although they had set up a case of fraud *qua* the decree and had failed to prove it. *Held*, further, that in order to make the decree binding on the minors it was not enough to show that the sanction of the Court to the compromise was obtained. Where a decree is passed upon adjudication, no separate suit would lie to set aside the decree except on the ground of fraud, but where the decree is passed simply upon a compromise, a suit should lie to set aside the decree upon grounds other than that of fraud. *Aushootosh Chandra* v. *Taraprasanna Roy, I. L. R. 10 Calc. 612*; *Lalji Sahu* v. *The Collector of Tirhut, 6 B. L. R. 648, 15 W. R. P. C. 23*: *Mewalall Thakoor* v. *Bhujhun Jha, 13 B. L. R. App. 11*; *22 W. R. 213*; *Ramgopal Majumdar* v. *Prasanna Kumar Samad, 2 C. L. J. 508*, *Barhamdeo Prashad* v. *Banarsi Prasad, 3 C. L. J. 119*, and *Manohar Lal* v. *Jadunath Singh, I. L. R. 28 All. 585*, referred to. SURENDRA NATH GHOSE *v.* HEMANGINI DASI (1906) . . . . **I. L. R. 34 Calc. 83**

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See MINOR.

MISCHIEF.

See CRIMINAL TRESPASS.
11 C. W. N. 467

—Penal Code (Act XLV of 1860), ss. 425, 426 —Act (Local) No. I of 1900 (N.-W. P. and Oudh Municipalities Act), s. 167.—Certain cattle belonging to one M. H. upon various occasions when in charge of a servant of M. H. strayed, or were driven, into the Government Gardens at Saharanpur and there caused damage. *Held*, that M. H. could not on these facts be convicted of the offence of mischief. *Forbes* v. *Grish Chander Bhattacharjee, 14 W. R. 31*, and *Empress* v. *Bai Baya, I. L. R. 7 Bom. 126*, followed. *Held*, also, that s. 167 of the Municipalities Act, 1900, did not apply, that section being one dealing with offences against the person. *King-Emperor* v. *Patan Din, Weekly Notes, 1905, 19*, followed. EMPEROR *v.* MEHDI HASAN (1907). I. L. R. 29 All. 565

MISDESCRIPTION OF GOODS.

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MISDIRECTION.

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MISJOINDER.

——of causes of action—

See AGRA TENANCY ACT, SS. 193 AND 57.
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See CIVIL PROCEDURE CODE, S. 45.
I. L. R. 29 All. 267

——of parties and causes of action—

1.—*Misjoinder—Suit for libel by several persons jointly—Misjoinder of plaintiffs and causes of action—Plaint, amendment of—Election of plaintiff—Civil Procedure Code (Act XIV of 1882), ss. 26 and 53.*—Where six members of the Calcutta Police Force jointly sued the editor and proprietor of a newspaper for damages in respect of a libel alleged to contain reflections upon their conduct in a criminal case:—*Held*, that there was not one and the same cause of action appertaining to all the plaintiffs, though the injury was caused by one act of the defendant, but that each plaintiff had a separate cause of action in respect of his own reputation; and that having regard to s. 26, Civil Procedure Code, there had been a misjoinder of plaintiffs and causes of action, and that the suit as framed could not proceed. *Held*, further, that there was nothing in the Civil Procedure Code or Rules of the Court to necessitate a dismissal of the suit: that the plaintiffs might be put to their election which one of them should proceed with the suit: and that after such election the plaint might be amended by striking out the other plaintiffs and making other consequential alterations. *Haramoni Dassi* v. *Hari Churn Chowdhry, I. L. R. 23 Calc. 833*, referred to. *Booth* v. *Briscoe, L. R. 2 Q. B. D. 496*, distinguished. *Smurthwaite* v. *Hannay*, [*1894*] *A. C. 494, P. & O. Co.* v. *Tsune Kijima*, [*1895*] *A. C. 661, Ali Serang* v. *Beadon, I. L. R. 11 Calc. 524, Varajlal Bhaishanker* v. *Ramdat Harikrishna, I. L. R. 26 Bom. 259*, and *Sandes* v. *Wildsmith*, [*1893*] *1 Q. B. 771*, followed. ALDRIDGE *v.* BARROW (1907) . . I. L. R. 34 Calc. 662

2.—*Misjoinder of parties—Criminal Procedure Code (Act V of 1898), s. 107—Two opposing parties proceeded against in one proceeding—Misjoinder.*—The two opposing parties in a dispute cannot be proceeded against under s. 107, Code of Criminal Procedure, and bound over to keep the peace in one proceeding. *Pran Krishna Shaha* v. *The Emperor, 8 C. W. N. 180*, referred to and considered. KAMAL NARAIN CHOWDHURY *v.* EMPEROR (1906) . . . . . 11 C. W. N. 472

3.—*Misjoinder of parties and causes of action —"In respect of the same matter," meaning of —Practice.*—The plaintiff sued two sets of defendants to recover from either the one or the other a sum of money for the rent of his godown. The plaintiff agreed to let a godown to defendants 1—6 from 1st May 1906. At the date of the agreement the godown was in the possession of Messrs. *N* and Co. Defendants 1—6 alleged that they did not get possession of the premises in terms of this agreement; that only one compartment out of three was given to them on the 22nd May; that they did not get possession of the other two compartments and in consequence they had to hire other premises. Messrs. *N* and Co. plead that there was an oral agreement with the plaintiff that they should occupy the godown till the end of May 1906; that they gave up possession of one compartment of the godown before the 22nd May 1906, and on the 22nd May they gave up possession of the remaining portion to the plaintiff and the first set of defendants. The defendants all pleaded that the suit as framed was bad by reason of misjoinder of parties and of causes of action. *Held*, disallowing the objection, that the suit was properly constituted. The most convenient way to try all the questions arising between the plaintiff and the defendants and the two sets of defendants *inter se* would be by one suit where all the three parties are before the Court as parties. The subject-matter in respect of which the plaintiff seeks relief is the rent of his godown. It is the same matter as regards both sets of defendants, and both sets of defendants are interested in the adjudication of the questions involved in the

MISJOINDER—*concluded.*

suit. The general principle governing the joinder of defendants would seem to be that there must be a cause of action in which all the defendants are more or less interested, although the relief against them may vary, but that separate causes of action against separate defendants quite unconnected and not involving any common question of law or fact cannot safely be joined in one action. The object of s. 28 seems to be to avoid multiplicity of suits if it could be done without embarrassment to any of the defendants. *Madan Mohun Lal* v. *Holloway, I. L. R. 12 Calc. 555*, followed; *Sadler* v. *Great Western Railway Company*, [1896] *A. C. 450*, distinguished. MOWJI MONJI v. KUVERJI NANAJI (1907) . . . . I. L. R. 31 Bom. 516

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I. L. R. 34 Calc. 642

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See DIGWARI TENURE.
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MORTGAGE.

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1. CONSTRUCTION.

1.—*Contemporaneous deeds—Sale and agreement to reconvey—Transaction whether mortgage—Intention—Mortgage by conditional sale—Transfer of Property Act (IV of 1882), s. 58 (c).*—On the construction of two contemporaneous documents, one of which purported to be a deed of sale and the other provided that on the vendor repaying the purchase-money mentioned in the deed of sale with costs within a fixed period the vendee would return the land, and in case he did not do so, the vendor would deposit the money in Court, and take possession. *Held*, that the two documents together did not constitute a mortgage. *Bhagwan Sahai* v. *Bhagwan Din, I. L. R. 12 All. 387*, followed. *Balkishen Das* v. *W. F. Legge, 4 C. W. N. 158*; *I. L. R. 22 All. 149*, distinguished. A certain date of payment is an essential element of a mortgage by conditional sale. KINURAM MONDOL v. NITYE CHAND SIRDAR (1907). 11 C. W. N. 400

2.—*Transfer of Property Act (IV of 1882), ss. 67, 96, 97—Person holding two mortgages on the same property, the first usufructuary and the*

MORTGAGE—*continued.*

second simple, can bring the property to sale in suit on the second mortgage free of the first mortgage.—A person holding two mo tgages on the same property, the first an usufructuary and the second a simple mortgage, can sue under s. 67 of the Transfer of Property Act to recover the money on the simple mortgage by bringing the property to sale free of the usufructuary mortgage. The decree in such a case should direct the property to be sold and the sale-proceeds to be applied first in discharge of the usufructuary mortgage, and the balance in discharging the second mortgage. The fact that no suit for sale could be brought on the usufructuary mortgage will be no bar to such mortgage being paid out of proceeds derved by the sale of the property on another mortgage. *Govinda Bhatta* v. *Narain Bhatta, I. L. R. 29 Mad. 424,* followed in principle. *Bhagwan Doss* v. *Bhawani, I. L. R 26 All. 14,* not followed. Ss. 96 and 97 of the Transfer of Property Act do not in terms exclude usufructuary mortgages and their provisions may be applied to such mortgages. RENGASAMI NADAN *v.* SUBBAROYA IYEN (1907).

I. L. R. 30 Mad. 408

3.—*Mortgage, lien of party paying prior, extinguished when part of mortgaged property is purchased for such amount—Sale for revenue—Trusts Act II of 1882, s. 90—Transfer of Property Act (IV of 1882), s. 65—Purchaser of equity of redemption from mortgagor not bound to pay public charges and is not when he purchases the lands at a revenue sale a constructive trustee under s. 90 of the Trusts Act.*—Where a person paying off a prior mortgage, purchases a portion of the mortgaged properties in consideration of the amount so paid by him, the lien acquired by such payment is extinguished and cannot be used by such purchaser as a shield against a subsequent mortgagee. The assignee of a mortgage decree purchasing a portion of the mortgaged properties, acquires over such portion a lien for only a proportionate share of the mortgage amount. The implied covenant on the part of the mortgagor, under s. 65 of the Transfer of Property Act, to pay the public charges on the properties mortgaged does not extend to the purchaser of the equity of redemption from the mortgagor. Such purchaser in omitting to pay such charges does not fail to discharge any obligation owing from him to a mortgagee of the said properties, and in purchasing such properties at a revenue sale for non-payment of such charges, he does not gain an advantage as qualified owner in derogation of the rights of the mortgagee or other persons interested in the property so as to constitute him a constructive trustee for them under s. 90 of the Trusts Act. RENGA SRINIVASA CHARI *v.* GNANAPRAKASA MUDALIAR (1907).

I. L. R. 30 Mad. 67

4.—*Prior and puisne mortgagee—Purchase by each at sale on his mortgage—Rights inter se—Suit for possession by prior mortgagee—Maintainability—Right of puisne mortgagee and purchasers not made parties in mortgage suit to redeem Partial redemption—Redemption, price of—Mode*

MORTGAGE—*continued.*

of calculation—Interest, rate of—Payments made by subsequent mortgagee to save property from rent sale, if to be taken into account—Contract Act (IX of 1872), s. 69—Bengal Tenancy Act (VIII of 1885), s. 171.—A first mortgagee obtained a decree for sale of the mortgaged properties and purchased the same in execution but when he proceeded to take possession was successfully resisted (*i*) by a second mortgagee, who had meanwhile sued on his mortgage, obtained a decree and purchased some of the properties in execution, and (*ii*) by certain other persons who had purchased some of the other properties from the mortgagor. None of these had been made parties in the first mortgagee's suit, the latter not having had notice of their interest in the mortgaged properties,—*Held*, that it was not obligatory on the first mortgagee to institute a fresh suit for sale on his mortgage against these persons and a suit for recovery of possession of the properties on the basis of his purchase was maintainable. *Har Persad Lal* v. *Dal Madan Singh, 9 C. W. N. 728 : I. L. R. 32 Calc. 891,* followed. That if the defendants wanted to retain possession they must redeem the plaintiff, but as the plaintiff was both mortgagee and purchaser, the defendants were not bound to redeem the entire mortgage, but only to the extent of the properties purchased by them. *Surjiram Marwari* v. *Berhamdeo Pershad, 2 C. L. J. 202 ; Hari Kissen* v. *Velait Hossein, 7 C. W. N. 723 : I. L. R. 30 Calc. 755,* relied on. That to redeem the plaintiff, it was not sufficient for the defendants to pay a proportionate share of the purchase-money paid by him. The amount payable must be calculated on the basis of the plaintiff's mortgage, but inasmuch as the plaintiff had already enforced that mortgage and the mortgage debt had been thereby converted into a judgment-debt he was entitled to the contract rate of interest, only up to the date of the decree in the previous suit, and interest at the Court rate subsequent thereto up to the date of payment to be fixed by the decree in the present suit. *Girish Chander* v. *Kedar Nath, 10 C. W. N. 592 : I. L. R. 33 Calc. 590 ; Rani Sunder Koer* v. *Rai Sham Kissen, 11 C. W. N. 249 : 5 C. L. J. 106,* followed. *Kasumunnissa* v. *Nilratna Bose, I. L. R. 8 Calc. 79, 88,* not followed *Held*, that in taking accounts credit ought not to be given to the defendants for payments alleged to have been made under s. 171, Bengal Tenancy Act, to save the properties from sale in execution of a rent decree, inasmuch as the first mortgagee was not bound by law to pay the amount within the meaning of s. 69 of the Contract Act. GANGADAS BHATTAR *v.* JOGENDRA NATH MITTER (1907) . . . **11 C. W. N. 403.**

2. FORECLOSURE.

See REDEMPTION.

5.—*Transfer of Property Act, ss. 52, 86 and 87—Lis pendens—Suit for foreclosure—Suit not terminated until decree absolute*—A suit for foreclosure of a mortgage is not terminated until the passing of the decree absolute. A purchase, therefore, of the mortgaged property made after the passing

MORTGAGE—*continued.*

of the decree *nisi*, but before such decree is made absolute, is subject to the doctrine of *lis pendens*. *Higgins* v. *Shaw, 2 Dr. & War. 356, Chunni Lal* v. *Abdul Ali Khan, I. L. R. 23 All. 331*, and *Shivjiram Sahebram Marwadi* v. *Waman Narayan Joshi, I. L. R. 22 Bom. 939*, followed. *Bellamy* v. *Sabine, 1 DeG. & J. 566*, referred to. PARSOTAM NARAIN *v.* CHHEDA LAL (1906).
I. L. R. 29 All. 76

3. POWER OF SALE.

6.—*Transfer of Property Act (IV of 1882), Ch. IV—Mortgage—Mortgage of mortgagee rights—Right of sub-mortgagee to bring to sale the mortgagee rights of his mortgagor—"Property".*—*Held* by the Full Bench, STANLEY, *C.J.*, and KNOX, BANERJI, BURKITT, AIKMAN, and RICHARDS, *JJ.*, that a sub-mortgagee of mortgagee rights in immovable property is entitled to a decree for sale of the mortgagee rights of his mortgagor. *Per* STANLEY, *C.J.*—In a properly constituted suit a puisne mortgagee or sub-mortgagee may have a sale of the interest mortgaged to them respectively, subject, in the case of a puisne mortgage, to the rights of a prior incumbrancer, and subject, in the case of a sub-mortgage, to the rights of redemption of the original mortgagor. *Mata Din Kasodhan* v. *Kazim Husain, I. L. R. 13 All. 432*, considered and dissented from. *Ganga Prasad* v. *Chunni Lal, I. L. R. 18 All. 113*, discussed and distinguished. *Raghunath Prasad* v. *Jurawan Rai, I. L. R. 8 All. 105; Sirbadh Rai* v. *Raghunath Prasad, I. L. R. 7 All. 568, 574; Jones* v. *Skinner, 5 L. J. Ch. 90; Taylor* v. *Russell*, [1892] *A. C. 255; In re Sargent, 17 Eq. 279; Rose* v. *Page, 2 Simons 471: 29 R. R. 142; Slade Rigg, 3 Hare 35, 64, R. R. 204; In re Hodson* and *Howe's Contract, L. R. 35 Ch. D. 668; Vencatachella Kandian* v. *Panjanadien, I. L. R. 4 Mad. 213; Kanti Ram* v. *Kut-ub-ud-din Mohomed, I. L. R. 22 Calc. 33; Beni Madhub Mahapatra* v. *Sourendra Mohan Tagore, I. L. R. 23 Calc. 795; Debendra Narain Roy* v. *Ramtaran Banerjee, I. L. R. 30 Calc. 599; Jaggeswar Dutt* v. *Bhuban Mohan Mitra, I. L. R. 33 Calc. 425; Muthu Vijia Raghunatha Ramchandra Vacha Mahali Thurai* v. *Venkatachallam Chetti, I. L. R. 20 Mad. 35*; and *Raj Coomary Dassee* v. *Preo Madhub Nundy, 1 C. W. N. 453*, referred to. RAM SHANKAR LAL *v.* GANESH PRASAD (1907).
I. L. R. 29 All. 385

4. PRE-EMPTION.

7.—*Mortgage—Property mortgaged not at date of execution belonging to the mortgagor—Effect of subsequent acquisition of such property by the mortgagor.*—The plaintiff in a pre-emption suit, in order to procure funds for the prosecution of his suit, executed a mortgage comprising certain property of which he was the owner and also the property the subject-matter of the suit for pre-

MORTGAGE—*continued.*

emption. The suit for pre-emption was successful. *Held*, that the mortgage took effect as regards the property the subject of the pre-emption suit from the time when the plaintiff mortgagor obtained possession by virtue of his decree in the suit. *Holroyd* v. *Marshall, 10 H. L. 210; Collyer* v. *Isaacs, 19 Ch. D. 342*; and *Bansidhar* v. *Sant Lal, I. L. R. 10 All. 133*, referred to. GAYA DIN *v.* KASHI GIR (1906) . . . . **I. L. R. 29 All. 163**

5. PRIORITY.

8.—*Mortgage—Priority—Mortgage by Receiver under an order of Court—Mortgage for preservation of property—Previous mortgage to pay off putni rent.*—Where a mortgage is executed by a Receiver under an order of Court directing that such mortgage should constitute a first charge, it takes priority over any other mortgage of earlier date. GIRIDHARI LAL RAY *v.* DHIRENDRA KRISTO MUKERJEE (1906).
I. L. R. 34 Calc. 427

9.—*Priority.*—When two mortgages are executed on the same day, that which was executed first takes priority and evidence may be given to ascertain which was in fact executed first. Where this cannot be ascertained the mortgagees would take as joint tenants or tenants in common. *Hopgood* v. *Ernest, 3 De. J. & S. 116*, followed. RAM RATAN SAHU *v.* BISHUN CHAND (1907) . **11 C. W. N. 732**

6. REDEMPTION.

See CIVIL PROCEDURE CODE, s. 257A.
I. L. R. 31 Bom. 552

10.—*Transfer of Property Act (IV of 1882), s. 99—Mortgaged property purchased by mortgagee in execution of a money decree on the mortgage debt, not redeemable by the mortgagor.*—A mortgagee sued the mortgagor for an instalment of the mortgage debt and obtained a simple money decree. In execution of such decree, the mortgagee brought to sale and purchased the mortgaged property. In a suit by the mortgagor brought to redeem the mortgaged property.—*Held*, that the mortgagor, having been a party to the decree and to the order for sale, was not entitled to redeem. *Muthuraman Chetty* v. *Ettappasami, I. L. R. 22 Mad. 372*, followed. *Mortand Balakrishna Bhat* v. *Dhondo Damodar Kulkarni, I. L. R. 22 Bom. 624, Kamini Debi* v. *Ramalochan Sirkar, 5 B. L. R. 450*, dissented from. DHARANIKOTA VENKAYYA *v.* BUDHARAZU SURAYYA GARU (1907).
I. L. R. 30 Mad. 362

11.—*Transfer of Property Act (IV of 1882), ss. 62, 63—Act No. XV of 1877 (Indian Limitation Act), Sch. II, Art. 134—Mortgage by mortgagee purporting to be of a proprietary interest in the mortgaged property—Foreclosure.*—Under ordinary circumstances a mortgagor cannot, before the time limited for payment to the mortgagee expires, take proceedings to redeem the mortgage. *Brown* v. *Cole, 41 Sim. 427; Vadju* v. *Vadju, I. L. R. 5 Bom.*

MORTGAGE—*continued.*

22; Raghubar Dayal v. *Budhu Lal, I. L. R. 8 All. 95;* and *De Braam* v. *Ford,* [*1900*] *Ch. 142,* referred to. The widow of a usufructuary mortgagee in possession made a gift of the mortgaged property to *A. H.* The donee mortgaged part of the property, the subject of this gift to *P. N.*, purporting to mortgage the full proprietary interest in the property. *P. N.* took proceedings for foreclosure against *A. H.*, as absolute owner and obtained foreclosure and possession of the property. *Held,* on the finding that *P. N.* acted *bond fide* and had no reason to suppose that *A. H.* was not, as he represented himself to be, the full owner of the property mortgaged, that *P. N.* was entitled as against the representative of the original mortgagor to the protection afforded by Article 134 of the second schedule to Act No. XV of 1877. *Ahamed Kutti* v. *Raman Nambudri, I. L. R. 25 Mad 99;* and *Ram Chandra Vithal* v. *Sheikh Mohidin, I. L. R. 23 Bom. 614,* distinguished; *Bhagwan Sahai* v. *Bhagwan Din, I. L. R. 9 All. 97; Radhanath Dass* v. *Gisborne & Co., 14 Moo. I. A. 1; Yesu Ramji Kalnath* v. *Balkrishna Lakshman, I. L. R. 15 Bom. 583; Behari Lal* v. *Muhammad Muttaki, I. L. R. 20 All. 482; Maluji* v. *Fakir Chand, I. L. R. 22 Bom. 225; Manavikraman Ettan Thamburan* v. *Ammu, I. L. R. 24 Mad. 471,* and *Narayan* v. *Shri Ram Chandra, I. L. R. 27 Bom. 373,* referred to. HUSAINI KHANAM *v.* HUSAIN KHAN (1907) . **I. L. R. 29 All. 471**

12.—*Redemption—Time granted by first Court—Unsuccessful appeal.*—Where the defendant was allowed six months by the first Court to pay off a mortgage debt, and upon appeal by the defendant the appeal was dismissed,—*Held,* that the six months' time allowed to the defendant should run from the date of the first Court's decree and not of the appellate decree. FAIJUDDI SARDAR *v.* ASIMUDDI BISWAS (1907) . **11 C. W. N. 679**

13.—*Redemption, right of—Transfer of property Act (IV of 1882), s. 99—Equitable principles of s. 99 not applicable against a purchaser not the mortgagee and not a party to the suit in which property was sold—Sale in contravention of s. 99 only voidable, not void—Civil Procedure Code (Act XIV of 1882), s. 244, bar to parties questioning sale.*—The equitable right of the mortgagor to redeem property brought to sale in contravention of s. 99 of the Transfer of Property Act by the mortgage, cannot arise when the auction purchaser at such sale is not the mortgagee, and is no party to the suit in which the property was sold. *Moyan Pathutti* v. *Pakuran, I. L. R. 22 Mad. 347,* distinguished. Such a sale is only voidable, not void. Parties to the suit must question the validity of the sale in execution and a separate suit will be barred by s. 244 of the Code of Civil Procedure. MUTHU *v.* KARUPAN (1907).
I. L. R. 30 Mad. 313

14.—*Redemption, right of—Transfer of Property Act (IV of 1882), s. 60—Mortgage—Effect of purchase by mortgagees of part of the mortgaged property.*—When the integrity of a mortgage has been broken up upon the purchase by the mortgagees of the equity of redemption in a portion of the mortgaged property, the right of redemption of each of the several mortgagors is confined to his own interest in the mortgaged property; he cannot redeem the remainder of the mortgaged property against the wishes of the mortgages. *Nawab Azimut Ali Khan* v. *Jowahar Singh, 13 Moo. I.A. 404; Kuray Mal* v. *Puran Mal, I. L. R. 2 All. 565,* and *Girish Chunder Dey* v. *Juramoni De, 5 C. W. N. 83,* followed. MUNSHI *v.* DAULAT (1906).
I. L. R. 29 All. 262

MORTGAGE—*continued.*

15.—*Redemption, suit for—Transfer of Property Act (IV of 1882), s. 91—Mortgage—Who may redeem—Perpetual lessee.*—In a suit for redemption of a mortgage the plaintiff was a perpetual lessee of the mortgaged premises from the mortgagor, holding under a lease granted upon payment of a premium of R800, with a yearly rental of R40 odd. By the terms of the lease the lessee was not liable to be ejected, even for non-payment of rent, while, if the title of the lessors proved defective, the lessee was entitled to a refund of the premium. *Held,* that the lessee was under the above circumstances entitled to redeem. *Paya Matathil Appu* v. *Kovamel Amina, I. L. R. 19 Mad. 151; Radha Pershad Misser* v. *Monohur Das, I. L. R. 6 Calc. 317; Jugal Kissore Lal Singh Deo* v. *Kartic Chunder Chottopadhya, I. L. R. 21 Calc. 116; Kasumunnissa Bibee* v. *Nilratna Bose, I. L. R. 8 Calc. 79; Girish Chundar Dey* v. *Juramoni De, 5 C. W. N. 83;* and *Ram Subhag* v. *Nar Singh, I. L. R. 27 All. 472,* referred to. RAGHUNANDAN PRASAD *v.* AMBIKA SINGH (1907).
I. L. R. 29 All. 679

7. SALE OF MORTGAGED PROPERTY.

16.—*Prior mortgage—Puisne mortgage—Suit by prior mortgagee for sale—Puisne mortgagee not made a party—Sale in execution—Rights of the puisne mortgagee.*—Where a prior mortgagee sues his mortgagor for the sale of the mortgaged property without making the puisne mortgagee a party to the suit, the latter is in no way affected by the suit or its results. Thus if the property is brought to sale in execution of the decree and is bought by a third person, the puisne mortgagee has, as against him, precisely the same rights as he had collectively against his mortgagor and the prior mortgagee. That is to say, he may sue to redeem the purchaser as mortgagee or thereafter as mortgagor to foreclose or suffer himself to be redeemed by him. PANDURANG *v.* SAKHARCHAND (1906) . . . . **I. L. R. 31 Bom. 112**

17.—*Sale of mortgaged property—Agreement—Solehnamah—Transfer of Property Act (IV of 1882), s. 89—Jurisdiction—Execution of decree.*—A suit on mortgage was adjusted, and a decree made treating a *solehnamah* filed by the parties as a part of the decree. It was agreed that the amount due should be paid in instalments, and that the mort-

MORTGAGE—*continued.*

gaged property should be sold in default of payment. The decree as originally drawn stated that on failure to pay any one instalment, the whole amount would become due and the mortgaged property would, in the meantime, remain hypothecated, but it did not direct a sale of the property. Thereafter, on the application of the decree-holder, the decree was amended by inserting the words—"On failure to pay the money covered by the instalments, the mortgaged property should be sold for realization of the amount." The decree-holder then applied for and obtained an order absolute for sale. On appeal, the said order was set aside on the ground that, having regard to the form of the decree as amended, no order under s. 89 of the Transfer of Property Act could be made. *Held*, that the parties having agreed that the decretal amount should be realized by sale of the hypothecated property, and the agreement having been expressed in proper form the Court had full jurisdiction to carry out the intention of the parties, and the mortgaged property should be sold to satisfy the decretal amount and that such execution accorded with the *cursus curiæ*. *Pisani* v. *Attorney General for Gibraltar*, *L. R. 5 P. C. 516*, and *Sadasiva Pillai* v. *Ramalinga Pillai*, *L. R. 2 I. A. 219*, followed. ABIR PARAMANIK *v.* JAHAR MAHMUD MANDAL (1907).

I. L. R. 34 Calc. 886

18.—*Transfer of Property Act (IV of 1882), s. 88—Mortgage—Charge—Suit for sale of property subject to a charge.*—There is no objection to the sale, in execution of a decree for sale on a mortgage "subject to the charge" of property which is liable to a charge for maintenance in favour of a particular person. *Mata Din Kasodhan* v. *Kazim Husain*, *I. L. R. 13 All. 432*, distinguished. LALMAN *v.* MOHAR SINGH (1906).

I. L. R. 29 All. 205

19.—*Mortgage—Same property mortgaged twice to same mortgagees—Suit for sale of the property—Part purchased by mortgagees under their decree on prior mortgage—Remainder liable for full amount of the subsequent mortgage.*—Sixteen villages were mortgaged by two mortgages of different dates to the same mortgagees. The mortgagees put their earlier mortgage into suit, obtained a decree, brought to sale 10 out of the 16 villages and purchased them themselves. *Held*, in a suit to sell the remaining villages in satisfaction of the second mortgage, that the remaining six villages were liable to the full extent of the second mortgage and not merely for a proportionate part of the money thereby secured. *Zahir Singh* v. *Buri Singh*, *F. A. No. 63 of 1903. decided 20th April 1905*, and *Bohra Thakur Das* v. *The Collector of Aligarh*, *I. L. R. 28 All. 593*, referred to. RAGHUNATH PRASAD *v.* JAMNA PRASAD (1906) . . **I. L. R. 29 All. 233**

20.—*Suit in forma pauperis—Court-fee—Property of defendant sold to realise court-fee—Property sold subject to a mortgage—Rights of mortgagee.*—*Held*, that the sale subject to a mortgage

MORTGAGE—*continued.*

of property belonging to the defendant in suit brought *in forma pauperis* for the purpose of realising the court-fee payable to Government by the plaintiff, does not preclude the mortgagee from bringing to sale the same property in execution of a decree for sale as his mortgage. *The Collector of Moradabad* v. *Muhammad Daim Khan*, *I. L. R. 2 All. 196*, overruled. *Ganpat Putaya* v. *The Collector of Kanara*, *I. L. R. 1 Bom. 7*, distinguished. DOST MUHAMMAD KHAN *v.* MANI RAM (1907).

I. L. R. 29 All. 537

8. MISCELLANEOUS.

21.—*Mortgagor and the second mortgagee given opportunity to redeem—Purchase in execution by the mortgagor—Second mortgagee's lien upon the property—Suit by second mortgagee—Question whether the purchaser a benamdar of the mortgagor, if can be gone into—Paramount title, claim of—Necessary party—Right of a person made a party defendant to urge in appeal that he was not a proper party.*—The mortgagor purchasing the mortgaged property in execution of a mortgage-decree made in the suit of a prior mortgagee in which mortgagor and the second mortgagee were made defendants and given an opportunity to redeem the prior mortgage acquires the property subject to the second mortgage. The question whether the purchaser of a property at a sale free from the second mortgage in execution of the mortgage-decree made in favour of the prior mortgagee, is a *benamidar* of the mortgagor or not does not relate to conflicting titles to the property as between the mortgagor and a person claiming a paramount title and is a proper question that arises in the suit of the second mortgagee to enforce his mortgage. Such a purchaser is therefore a proper party to the suit. When a person who is not a proper party to a suit allows himself to be made a party defendant without any objection and an issue relating to him is raised and decided in the suit, he can not change front and insist in the Appellate Court that an error has occurred in making him a party and that the issue was not triable in the action. BHAJU CHOWDHURY *v.* CHUNI LAL MARWARI (1906)

11 C W .N. 284

22.—*Transfer of Property Act (IV of 1882), s. 85—Suit on mortgage—Parties—Notice—Person not known to be interested and not made a party, if bound—Representation of debtor's estate by adult heirs only—Suit to redeem brought after sale—Limitation—Limitation Act (XV of 1877), Sch. II, Art. 12 (a).*—In a suit to enforce a mortgage, the mortgagee made one only of two persons who represented the estate of the mortgagor a party dependent not having notice of the existence of the other. *Held*, that the latter was bound by the decree obtained by the mortgagee and his interest passed at the sale held in execution of the decree. *Ram Nath Rai* v. *Luchman Rai*, *I. L. R. 21 All. 194*; *Lala Suraj Prosad* v. *Golab Chand*, *I. L. R. 28 Calc. 517*; *Shivram* v. *Genu*, *I. L. R. 6 Bom. 515*,

MORTGAGE—*concluded.*

relied on. *Assamathem Nissa Bibee* v. *Roy Lachmipat Singh, I. L. R. 4 Calc. 142; Jafri Begam* v. *Amir Muhammed Khan, I. L. R. 1 All. 822; Luchmipat Singh* v. *Land Mortgage Bank of India, I. L. R. 14 Calc. 464,* referred to. That for the purpose of the suit the estate of the mortgagor was sufficiently represented as the person who was sued was alone in possession of the mortgaged property, and the other person, a minor, was not known to the mortgagee and his interest did not appear to have suffered by reason of his not being made a party. *Khiarajmal* v. *Diam, 9 C. W. N. 201: I. L. R. 32 Calc. 296: L. R. 32 I. A. 23,* followed. SHARAFUDDIN, *J.*—A suit by the latter to redeem the mortgage after the property had been sold as above, could not succeed without the sale being set aside and not having been instituted within one year of his attaining majority was barred under Art. 12 (*a*) of Sch. II of the Limitation Act. RAM TARAN GOSWAMI *v.* RAMESWAR MALIA (1907).

11 C. W. N. 1078

23.—*Mortgage-suit—Subsequent purchaser not made a party—Sale—Purchase by mortgagee himself—Mortgagee's right to sue for possession—Suit for sale— Limitation.*— Where a mortgagee *A* brought a suit on his mortgage without making one *D,* a subsequent transferee from mortgagor, a party although he had notice of the transfer and in execution of the decree obtained in the suit purchased the property himself: *Held,* that a suit by *A* for the recovery of possession of the property from *D* does not lie, and *A.'s* only remedy is by a suit for sale. AGHORE NATH BANNERJEE *v.* DEB NARAIN GUIN (1906) . . . . . **11 C. W. N. 314**

MORTGAGE-BOND

See CIVIL PROCEDURE CODE.

I. L. R. 31 Bom. 552

MORTGAGE DECREE.

See COSTS, LIABILITY FOR.

I. L. R. 30 Mad. 464

See TRANSFER OF PROPERTY ACT.

I. L. R. 31 Bom. 244

MORTGAGED PROPERTY.

See MORTGAGE.

See SALE IN EXECUTION OF DECREE.

MORTGAGEE.

See DECREE . **I. L. R. 34 Calc. 150**

See TRANSFER OF PROPERTY ACT, s. 85.

I. L. R. 30 Mad. 353

——rights of—

See ACTIONABLE CLAIM.

I. L. R. 30 Mad. 235

1.—*Transfer of Property Act (IV of 1882), s. 99—Money decree obtained by mortgagee against*

MORTGAGEE—*concluded.*

mortgagor—Transfer of the decree— Assignee bound by the provisions of s. 99.—The transferee of a money decree obtained by a mortgagee against his mortgagor is bound by the restriction imposed upon the mortgagee by s. 99 of the Transfer of Property Act (IV of 1882). He can attach the mortgaged property, but he is not entitled to bring it to sale otherwise than by instituting a suit under s. 67 of the Act. CHHAGAN *v.* LAKSHMAN (1907).

I. L. R. 31 Bom. 462

2.—*Adverse possession—Transfer of Property Act (IV of 1882), s. 6 (d).*—A mortgagee cannot, during the continuance of the mortgage by any act of his, render his possession adverse to the mortgagor. *Khiarajmal* v. *Daim, I. L. R. 32 Calc. 296, 312,* referred to. MUZAFFAR ALI KHAN *v.* PARBATI (1907) . . . . **I. L. R. 29 All. 640**

MOTHER'S SHARE ON PARTITION.

See HINDU LAW—PARTITION.

11 C. W. N. 239, 698

MULTIFARIOUSNESS.

See CIVIL PROCEDURE CODE, s. 45.

I. L. R. 29 All. 267

MUNICIPAL CORPORATION.

——extension of time of prosecution, by—

See PROSECUTION.

I. L. R. 34 Calc. 909

MUNICIPALITY.

—*Election of Councillor—Bye-election—Officer appointed to receive nomination papers—Return by the officer of plaintiff's nomination papers—Suit for injunction and declaration—Malice.*— The plaintiff, who was a councillor of Surat Municipality, disabled himself from continuing to be a councillor by virtue of clause (*b*) (*iii*) of sub-s. (*2*) of s. 15 of the District Municipal Act (Bom. Act III of 1901) for having acted as a councillor in a matter in which he had been professionally interested as a pleader on behalf of a client. On the plaintiff being thus unseated, a vacancy was created and a bye-election was ordered to be held. The defendant was the officer appointed by the Collector to receive nomination papers for the bye-election. The plaintiff, who was duly qualified by s. 12 (*1*) of the District Municipal Act (Bom. Act III of 1901) to be a candidate, was nominated as a candidate by duly qualified electors. The officer appointed to receive the nomination papers, received the papers of the plaintiff's nomination, and having heard the plaintiff, returned his nomination papers on the ground that he, having been disabled, could not stand as a candidate at the bye-election to fill up a vacancy created by himself. The plaintiff thereupon brought a suit against the officer for an injunction that the defendant should enter the plaintiff's name in the

MUNICIPALITY—*concluded.*

list of candidates to be published by the defendant and for a declaration that he was duly qualified to appear as a candidate. The plaintiff subsequently claimed damages in lieu of injunction. The first Court found that the plaintiff was not entitled to an injunction, but it awarded to him damages to the extent of R150 owing to the defendant's wrongful act. On appeal by the defendant, the Judge reversed the decree and dismissed the suit on the ground that malice on the part of the defendant was necessary to such a suit and that no such malice was proved. *Held,* confirming the decree on second appeal by the plaintiff, that in the absence of malice no such suit could lie against the defendant. CHUNILAL *v.* KIRPASHANKAR (1906) . . **I. L. R. 31 Bom. 37**

MURALI.

See HINDU LAW.

I. L. R. 31 Bom. 495

MURDER.

See INSANITY.

—*Penal Code (Act XLV of 1860), s. 302—Proof of offence—Circumstantial evidence—Conviction of one of two persons, when uncertain who fired the fatal shot, in the absence of common intention—Penal Code, ss. 34 and 149—Evidence, mode of sifting and weighing—Dividing witnesses into classes and accepting evidence of one class and rejecting that of another—Presumption of innocence—Probabilities, consideration of—Duty of prosecution to examine all important witnesses and produce all available evidence.*—Where the Sessions Judge in a trial on a charge of gun-shot murder against *N*, found that *N* and another person *L* were seen immediately after the report of the gun at the scene of occurrence each with a gun in his hand, but he did not find which of them fired the fatal shot, his only finding being that either *N* or *L* fired the shot that killed the deceased, and there was no finding in the judgment that *N* and *L* had a common intention and acted in concert and that the gun was fired in furtherance of their common intention: *Held,* that the legal inference from these findings must be that neither *N* nor *L* was guilty of the offence of murder. The Ipswich case *King* v. *Richardson, 1 Leach's Crown L. Cas. 431,* followed. The fact that an accused person was found with a gun in his hand immediately after a gun was fired and a man was killed on the spot from which the gun was fired, may be strong circumstantial evidence against the accused, but it is an error of law to hold that the burden of proving innocence lies upon the accused under such circumstances. If there are two persons who answer the above description the circumstantial evidence loses its weight very substantially. An elementary principle of sifting evidence is to test it in the light of probabilities. The piecemeal examination of the testimony of individual witnesses without a broad view of the facts, circumstances and probabilities of a case

MURDER—*concluded.*

generally leads to a failure of justice, especially in a case where most of the witnesses are drawn from a class of persons whose testimony is frequently unconvincing and not unfrequently unreliable. Even if witnesses in a case do not break down in cross-examination or contradict each other, yet if their testimony is opposed to the ordinary course of human conduct and to the natural order of things, such testimony must be accepted with the greatest caution. The method of the Sessions Judge in dealing with the testimony of the witnesses by dividing them into two classes—Hindus and Mahomedans—and accepting the evidence of one class and rejecting that of the other was open to serious objection. The withholding of important witnesses who were in one way or other intimately connected with the transaction or the occurrence and the state of things immediately after, gives rise to the irresistible inference that if they were examined they would not have corroborated the prosecution story. NIBARAN CHANDRA ROY *v.* KING-EMPEROR (1907) . . . . **11 C. W. N. 1085**

MUSHAA.

See MAHOMEDAN LAW—GIFT.

L. R. 34 I. A. 167

MUTUALITY.

See MINOR. . **I. L. R. 34 Calc. 163**

MUTWALI.

See MAHOMEDAN LAW—ENDOWMENT.

I. L. R. 34 Calc. 118

N

NATIVE CHRISTIANS.

—*Converts from Hindu religion—Joint family—Co-parcenership—Inheritance—Indian Succession Act (X of 1865), s. 93—Intestate and testamentary succession.*—Parcenership can be a part of the law governing the rights of a Christian family converted from the Hindu religion. *Tellis* v. *Saldanha, I. L. R. 10 Mad. 69,* disapproved. The Indian Succession Act (X of 1865) does not affect rights of co-parcenership as between those to whom it applies. The purpose of that Act was to amend and define the rules of law applicable to intestate and testamentary succession. It is with the *devolution* of rights on intestacy that the Act deals. It does not purport to enlarge the category of heritable property. S. 93 of the Act actually recognizes a joint tenancy with the right of survivorship. *Navroji Manockji Wadia* v. *Perozbai, I. L. R. 23 Bom. 50,* referred to. The distinction between co-parcenership and inheritance is that in the case of inheritance property devolves on death, it survives in the case of co-parcenership; on inheritance new rights are acquired, on survivorship the enjoyment

NATIVE CHRISTIANS—*concluded.*

of existing rights is increased by the removal of one from the body of co-sharers. FRANCIS GHOSAL *v.* GABRI GHOSAL (1906) . I. L. R. 31 Bom. 25

NEGLIGENCE.

See CIVIL PROCEDURE CODE, ss. 568, 623. I. L. R. 31 Bom. 381

See COLLISION. . 11 C. W. N. 173

—*Bill of lading, construction of.*—*M* shipped 4,000 bags of rice in the S. S. *Thorndale* belonging to *B* for delivery at Tuticorin under a bill of lading, which contained amongst others the following condition:—"The Company is to have the option of delivering these goods or any part thereof into receiving ship or landing them at the risk and expense of the shipper or consignee as per scale of charges . . . . . and is also to be at liberty until delivery to store the goods or any part thereof . . . . . In all cases and under all circumstances, the liability of the Company shall absolutely cease when the goods are free of the ship's tackle and thereupon the goods shall be at the risk, for all purposes and in every respect, of the shipper or consignee." The ship arrived at Tuticorin on the 23rd October and began discharging goods on the 24th. Heavy rains commenced on the 27th and continued till the 30th, but the discharge of the goods was not stopped and continued till the 30th. The bags got wet while being landed and became damaged by remaining on the foreshore without being immediately removed by *M*. *M* sued *B* for damages for the bags damaged and lost. It was found that the damage might have been averted if the bags had been removed by *M* immediately on their being landed and it was also found that *B* had not taken any precautions to protect the bags. On the above facts:—*Held*, that *B* was bound to take reasonable care and that his landing and stacking the goods uncovered on the foreshore during rainy weather amounted to actionable negligence. *Per* SUBRAHMANIA AYYAR, *J.*, that the first of the two conditions in the bill of lading did not apply to the landing of the goods and that the second condition did not exempt the defendants from liability for negligence as bailees till actual delivery on land. *Per* MILLER, *J.*, *per contra*. The second condition in the bill of lading applied to all stages of the transaction covered by the contract, including the stages of landing and storing, and the defendants were thereby exempted from liability for their negligence on such operations. If the second condition should be struck out, the defendants will still be protected from liability by the first condition. SHEIK MAHAMAD RAVUTHAR *v.* THE BRITISH INDIA STEAM NAVIGATION COMPANY (1906) . . . I. L. R. 30 Mad. 79

NEGOTIABLE INSTRUMENTS.

See NEGOTIABLE INSTRUMENTS ACT.

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881).

——ss. 4, 26, 27, 28—

See JOINT FAMILY, LIABILITY OF. 11 C. W. N. 139

——ss. 8, 78—

1.—*In a suit by a payee named in a negotiable instrument or an indorsee, plea that such payee or indorsee is benamidar not allowable.*—According to the law merchant which governed negotiable instruments in this country before the passing of the Negotiable Instruments Act, no person could sue on a negotiable instrument unless he were named therein as payee or had become entitled as indorsee or bearer. Ss. 8 and 78 of the Negotiable Instruments Act have reproduced the law as it stood before the passing of the Act. The general provisions of the Indian Contract Act as regards the rights and liabilities of undisclosed principals were not intended to alter these well established rules as to negotiable instruments. In a suit on a negotiable instrument by the payee named therein or the indorsee, it is not open to the defendant to plead that such payee or indorsee is a mere benamidar. *Ganapati Naiken* v. *Saminatha Pillay, C. R. P. No. 578 of 1895*, unreported. *Gurumurti* v. *Sivayya, I. L. R. 21 Mad. 391*, overruled. SUBBA NARAYANA VATHIYAR *v.* RAMASWAMI AIYAR (1906). I. L. R. 30 Mad. 88

2.—*Right of indorser indorsing for collection—Indorser on regaining possession of bill, may strike out name of indorsee and himself sue on the bill.*—The holder of a negotiable instrument within the meaning of s. 8 of the Negotiable Instruments Act, to whom payment must be made under s. 78 of the Act, is the person who, *on the face of such instrument, is entitled in his own name* to the possession thereof and to receive or recover the amount due therefor from the parties thereto. *Subba Narayana Vathiar* v. *Ramaswamy Iyer, I. L. R. 30 Mad. 93*, referred to. Where the drawer or indorser takes up a bill by paying the holder, he is entitled to strike out subsequent parties and maintain a suit on such bill against the parties antecedent to himself. Where a bill is indorsed for collection and is returned by the indorsee to the indorser, the former ceases to be the holder within the meaning of s. 8 of the Act, and the latter can maintain a suit on the bill by striking out the name of the indorsee. English and American cases on the subject considered. SUBRAMANIA CHETTY *v.* ALAGAPPA CHETTY (1907) . . . . I. L. R. 30 Mad. 441

—— s. 80—

See INTEREST. . I. L. R. 29 All. 33; L. R. 34 I. A. 6

NEW POINT.

See PRIVY COUNCIL, PRACTICE OF. I. L. R. 34 Calc. 709; L. R. 34 I. A. 164

NOABAD MEHAL.

—Noabad mehal in Chittagong district—Incidents—Taraf and noabad property distinguished—"Noabad taraf," what is—Settlement whether permanent or temporary.—Where the question was whether a certain mehal, known as mehal *Noabad taraf* Joy Narain Ghosal, in the district of Chittagong, was a part of the permanently settled *taraf* of the proprietor, or consisted merely of ordinary *Noabad* lands temporarily settled and liable to periodical resettlement and annexed to the proprietor's *taraf* for convenience only: *Held*, that the special history of the tenure from 1763 when it was created showed that the mehal was neither the one nor the other. The mere fact that a mehal is a *Noabad* mehal does not necessarily attach to it the incidents of ordinary *Noabad* properties of later creation. All *Noabad* mehals of Chittagong have this in common that the proprietors have to pay rent or revenue to Government. But the incidents of different *Noabad* mehals may vary very greatly. The incidents of the present mehal determined, and *held*, mainly upon the basis of a *kabuliyat* executed by the proprietors in favour of the Government in 1852, that the revenue was fixed in perpetuity on the *hasila* area only. RAM SUNDAR SAHA *v.* THE SECRETARY OF STATE FOR INDIA (1907) . . . . . **11 C. W. N. 928**

NON-OCCUPANCY RAIYAT.

——heritability—

—Right of non-occupancy raiyat whether heritable—Custom and contract—Bengal Tenancy Act (VIII of 1885), ss. 5 (2), 79, 82, 160 (c).—Held by the Full Bench (BRETT and MITRA, *JJ.*, dissenting), that the right of a non-occupancy raiyat has not been made heritable by the Bengal Tenancy Act, but if such right were heritable at the time of the passing of that Act it has not been taken away by it. *Per* GEIDT, *J.*—The Legislature has not by any enactment, express or implied, conferred the right of inheritance on non-occupancy raiyats; and apart from custom or contract the right of a non-occupancy raiyat is not heritable. LAKHAN NARAIN DAS *v.* JAINATH PANDAY (1907).
I. L. R. 34 Calc. 516

NON-TRANSFERABLE RIGHT.

See LANDLORD AND TENANT.
I. L. R. 34 Calc. 689

NORTH-WESTERN PROVINCES AND OUDH ACTS.

——1869—I—

See OUDH ESTATES ACT.

——1873—XIX—

See NORTH-WESTERN PROVINCES LAND REVENUE ACT.

NORTH-WESTERN PROVINCES AND OUDH ACTS—*concluded.*

——1891—I—

See NORTH-WESTERN PROVINCES AND OUDH WATER-WORKS ACT.

——1899—III—

See UNITED PROVINCES COURT OF WARDS ACT.

——1900—I—

See UNITED PROVINCES MUNICIPALITIES ACT.

——1901—II—

See AGRA TENANCY ACT.

——1901—III—

See UNITED PROVINCES LAND REVENUE ACT.

NORTH-WESTERN PROVINCES LAND REVENUE ACT (XIX OF 1873).

——ss. 154, 190—

—Mahal taken under direct management—Rent of sir land fixed by Collector—Sale of mahal before release from direct management.—A mahal was taken by the Collector under direct management and the late proprietor was recorded as ex-proprietary tenant of the *sir* land and his rent was fixed by the Collector under the provisions of s. 190 of Act No. XIX of 1873. While still under direct management the mahal was sold. The purchaser paid up the arrears of land revenue due thereon and possession was given to him. *Held*, that the purchaser was entitled to claim from the ex-proprietary tenant the rent fixed by the Collector: it was not incumbent upon him to get the rent fixed again. HASAN ALI KHAN *v.* MAZHAR-UL-HASAN (1907).
I. L. R. 29 All. 318

——ss. 194 (*g*), 203—

—Act (Local) No. III of 1899 (Court of Wards Act), ss. 9, 35 and 47—Power of Court of Wards to sell property under its superintendence.—The estate of a Muhammadan lady, named Hawa Begam, was at her own request taken under the superintendence of the Court of Wards under s. 194, cl. (*g*), of Act No. XIX of 1873. This was in 1896. In 1902 the Court of Wards sold a portion of Hawa Begam's property, as was alleged, without her consent. *Held*, on suit by persons claiming title through Hawa Begam to recover the property so sold, that the Court of Wards was under the circumstances entitled to sell, even without the owner's consent, and that its discretion could not be questioned in any Civil Court. *Semble*: that if the property had been placed under the superintendence of the Court of Wards, under s. 9 of Local Act No. III of 1899, and if the sale had been made without the consent of the proprietor, otherwise than on the ground set out in the concluding paragraph of s. 35, the sale would have been a bad sale and the

NORTH-WESTERN PROVINCES LAND REVENUE ACT (XIX OF 1873)—*concluded.*

Civil Court could have entertained a suit to question the power of the Court of Wards to sell. MOHSAN SHAH *v.* MAHBUB ILAHI (1907). I. L. R. 29 All. 589

NORTH-WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT (LOCAL I OF 1900).

——s. 47—

—*Contract—Mode of execution by Board.*—Where a contract entered into with a Municipal Board for the supply of material for road-making was endorsed both by the Secretary and the Vice-Chairman of the Board and this endorsement referred to the contents of the contract and its confirmation: *Held*, that this was a sufficient compliance with the requirements of s. 47 of the Municipalities Act. MUNICIPAL BOARD OF NAJIBABAD *v.* SHEO NARAIN (1907) . . I. L. R. 29 All. 346

——s. 167—

See PENAL CODE, ss. 425, 426.
I. L. R. 29 All. 565

NORTH-WESTERN PROVINCES AND OUDH WATER-WORKS ACT (LOCAL I OF 1891).

——ss. 34, 40 and 41—

—*Construction of Statutes—Omission to give notice of re-occupation of house—Water rate paid during period of non-occupation.—Held*, that the provisions of s. 41 of the North-Western Provinces and Oudh Water-Works Act, 1891, would not apply to the case of a person who had in fact regularly paid the water rate due in respect of the house during the period of its non-occupation. EMPEROR *v.* SUMER CHAND (1907) . I. L. R. 29 All. 375

NOTICE.

See CIVIL PROCEDURE CODE, s. 424.
I. L. R. 29 All. 567

See COMPENSATION.
I. L. R. 34 Calc. 470

See PROSECUTION.
I. L. R. 34 Calc. 909

See PUBLIC DEMANDS RECOVERY ACT, ss. 8, 10. . I. L. R. 34 Calc. 811

See PUTNI SALE. . 11 C. W. N. 729

See RAILWAYS ACT.
I. L. R. 31 Bom. 534

See VENDOR AND PURCHASER.
I. L. R. 31 Bom. 566

——of declaration—

See SALE FOR ARREARS OF REVENUE.
I. L. R. 34 Calc. 381

NOTICE—*continued.*

——to the accused—

See FURTHER INQUIRY.
11 C. W. N. 173

——to quit—

See LANDLORD AND TENANT.
I. L. R. 34 Calc. 104

See LEASE. . . 11 C. W. N. 1124

See SERVICE-TENURE. 11 C. W. N. 46

See TRANSFER OF PROPERTY ACT, s. 106.
I. L. R. 30 Mad. 109

1.—*Calcutta Municipal Act (III B. C. of 1899), ss. 406, 407, 408 and 474—Notice under s. 408—Standard plan—Necessity of attaching a copy of the plan to the notice—Bustee improvement—Power and duty of the Corporation in respect thereof.*—The duty of the Corporation in improving *bustees* is a most important one and they have been invested with the most ample power, but when certain penal sections enforced by the criminal law are put in motion on the report of the servants of the Municipality it is incumbent on the Magistrate and the authorities of the Corporation to see that the legal procedure which is a condition precedent to any conviction, is strictly and properly carried out. Where a letter was issued by the Deputy Chairman requiring the petitioners to do certain works, but no notice under s. 408 was issued directing them to specifically carry out the works: *Held*, that the conviction of the petitioners under s. $\frac{408}{474}$ of Act III (B. C.) of 1899 for neglecting to carry out the works, cannot stand. When the Municipality directs one of several owners of a *bustee* to carry out certain improvements and issues a general notice under s. 408 of Act III (B. C.) of 1899, it is the duty of the Municipality to serve him with a copy of the standard plan approved by the General Committee under s. 407 and point out to him on that plan what work he is to do. KANAI LAL JALAN *v.* THE CORPORATION OF CALCUTTA (1906).
11 C. W. N. 508

2.—*Public Demands Recovery Act (Bengal Act I of 1895), s. 10—Non-service of notice, effect of—"Adult"—Sale—Suit to set aside sale—Procedure—Limitation—Civil Procedure Code (Act XIV of 1882), ss. 244, 312—Limitation Act (XV of 1877), Sch. II, Art. 12 (b).*—Where it is alleged that notice has not been served under s. 10 of the Public Demands Recovery Act, the onus is on the party alleging want of notice. *Rakhal Chandra Rai Chowdhuri* v. *Secretary of State, I. L. R. 12 Calc. 603*, referred to. It is not sufficient that such notice should be actually served; it must be served in accordance with the provisions of s. 31 of the Act. "Adult" in that section does not mean a person who has attained majority within the meaning of the Majority Act, but a person of such an age as to be capable and responsible for the due communication of the notice to the member of the family for whom it is intended. A duly made certificate has on its filing the force and effect of a decree. Until, however, service of notice under s. 10, which has the

NOTICE—*concluded.*

effect of an attachment, no particular property is bound by the decree. A sale without prior attachment is irregular, but not a nullity. *Kishory Mohun Roy* v. *Mahomed Mujaffar Hossein, I. L. R. 18 Calc. 188,* referred to. The due making and filing of the certificate gives it the effect of a decree, and therefore non-service of notice under s. 10 does not affect the validity of the certificate itself. A suit to set aside a sale on the sole ground that the decree under which it was held was an invalid decree simply because of absence of notice under s. 10, fails because such absence of notice does not affect the validity of the decree. *Baijnath Sahai* v. *Ramgut Singh, I. L. R. 23 Calc. 775,* followed. *Saroda Charan Bandopadhya* v. *Kista Mohun Bhattacharjee, 1 C. W. N. 516; Chunder Kumar Mukerjee* v. *The Secretary of State, I. L. R. 27 Calc. 698; Gopal Das* v. *Hardeo Das, 5 C. W. N. 86; Ambica Prosad* v. *Gopal Buksh Das, 1 C. L. J. 550; Ramrup Sahay* v. *Khushal Misser, 6 C. W. N. 630; Srinath Hore* v. *Bishan Chandra Das, 2 C. L. J. 504; Umed Ali Bhuyan* v. *Raj Lakshmi Debya, I. L. R. 33 Calc. 84; Ramrup Sahai* v. *Kushal Misser, 3 C. L. J. 280; Sham Lal Mandal* v. *Nilmani Das, 5 C. L. J. 385, 387,* not followed. The Certificate Officer has jurisdiction to transfer the execution of the decree. The Collector of the 24-Parganas is *ex-officio* Collector of Calcutta. The Collector of the 24-Parganas may, in his capacity of Certificate Officer, sell immoveable property in Calcutta. Ss. 244 and 312 of the Civil Procedure Code apply to execution proceedings under the Public Demands Recovery Act. Art. 12 (*b*), Sch. II of the Limitation Act bars the suit. HARI CHARAN SINGH *v.* CHANDRA KUMAR DEY (1907).

I. L. R. 34 Calc. 787

NOTIFICATION OF SALE.

See SALE FOR ARREARS OF REVENUE.

I. L. R. 34 Calc. 381

O

OATH.

See OATHS ACT (X OF 1873), s. 9.

I. L. R. 29 All. 49

OATHS ACT (X OF 1873).

—s. 9—

—Agreement to be bound by statement on oath of specified person—Such agreement not revocable except for special cause.—Where a party to a suit has made either a reference to arbitration or a reference to the oath of a witness such as is provided for by s. 9 of the Indian Oaths Act, 1873, he should not be allowed arbitrarily to withdraw from the reference. *Lekhraj Singh* v. *Dulhma Kuar, I. L. R. 4 All. 302,* and *Ram Narain Singh* v. *Babu Singh, I. L. R. 18 All. 46, 49,* referred to. CHIDDU *v.* KUNWAR SEN (1906) . . **I. L. R. 29 All. 49**

OBJECTION.

—to apportionment—

See COMPENSATION.

I. L. R. 34 Calc. 451

—to validity of decree—

See EXECUTION OF DECREE.

I. L. R. 30 Mad. 26

OBSTRUCTION ON PUBLIC STREET.

See ENCROACHMENT.

I. L. R. 34 Calc. 844

OCCUPANCY HOLDING.

See AGRA TENANCY ACT (LOCAL) II OF 1901, SS. 20, 21 AND 31.

I. L. R. 29 All. 129, 327

See BENGAL TENANCY ACT, S. 29(*b*).

11 C. W. N. 62

See LANDLORD AND TENANT.

See RIGHT OF OCCUPANCY.

1.—*Non-transferable occupancy holding—Co-sharer landlord's decree for rent—Sale in execution—Purchase by decree-holder Purchase at mortgage-sale—Rights of purchasers.*—In a suit for recovery of khas possession by the plaintiff who had purchased an occupancy holding in execution of a mortgage decree, the defendant claimed under a lease from co-sharer landlord who also had purchased the holding in execution of a decree for his share of the rent. *Held,* that the question of transferability of the holding did not arise. AYENUDDIN NASYA *v* SRIS CHANDRA BANERJI (1906).

11 C. W. N. 76

2.—*Similarity of possession—Temporary lease—Occupancy raiyat—Right of landlord to recover khas possession—Costs.*—Where a lessee of lands in the occupation of *raiyats* who had *jote* rights obtained *khas* possession of the lands with the consent of the *raiyats* for the purpose of indigo cultivation: *Held,* that the lessee being merely a landlord in occupation did not acquire occupancy right in the lands and the lessor became entitled to *khas* possession on the expiry of the lease. RAM LOCHI KOERI *v.* HERBERT COLLINGRIDGE (1907).

11 C. W. N. 397

3.—*Occupancy holding—Right of occupancy—Sale of non-transferable occupancy holdings in execution of money decree—Subsequent recognition by landlord—Code of Civil Procedure (Act XIV of 1882), s. 244—Questions for Court executing decree—Issue raised by judgment-debtor as defendant in separate suit that property sold was not saleable—Estoppel.*—Where the purchaser of a non-transferable occupancy holding at a sale in execution of a money-decree obtains the landlord's consent to the sale and his recognition of the purchaser as a tenant as soon as can reasonably be expected after the objections to the purchaser's obtaining possession

OCCUPANCY HOLDING—*concluded.*

have been overcome, the sale is rendered valid in law. It is not necessary that the consent of the landlord should be obtained prior to the execution proceedings. Where in execution of a money decree against the defendant an occupancy holding belonging to him was sold and he had failed to raise the objection at the time of the sale that the holding was not transferable, although he had full knowledge of the execution proceedings and had full opportunity to raise the objection : *Held*, that it was not competent to him to resist the purchaser after the confirmation of the sale and that as between himself and the purchaser the title to the property vested in the latter on such confirmation. *Sheikh Murullah* v. *Sheikh Burullah, 9 C. W. N. 972; Durga Charan Mandal* v. *Kali Prasanna Sarkar, I. L. R. 26 Calc. 727 ;* and *Bhiram Ali Shaik Shikdar* v. *Gopi Kanth Shaha, I. L. R. 24 Calc. 355,* referred to. DWARKANATH PAL *v.* TABINI SANKAR RAY (1907).
I. L. R. 34 Calc. 199

4.—*Occupancy holding, transferability of—Custom and usage, proof of—Second appeal, ground of—Finding of fact.*—To prove a custom or usage that occupancy holdings are transferable in any locality, it is not sufficient to shew simply that such holdings are sold in the village or neighbouring villages. The essence of a usage of transferability is that transfers made to the knowledge of, but without the consent of, the landlord are valid and must be recognised by him. *Jagun Proshad* v. *Posun Sahoo, 8 C. W. N. 172,* followed. When occupancy holdings are not transferable by custom the person who purchases them in execution of a money-decree purchases nothing. They are not transferable as between the judgment-debtor and the decree-holder. PEARY MOHAN MUKERJEE *v.* JOTE KUMAR MUKERJEE (1906) . . . . . 11 C. W. N. 83

OCCUPANCY RIGHTS, SALE OF.

See KHOTI SETTLEMENT ACT.
I. L. R. 31 Bom. 267

See OCCUPANCY HOLDING.

OCCUPANCY TENANT.

See KHOTI SETTLEMENT ACT.
I. L. R. 31 Bom. 267

OFFENCE.

See RAILWAY COMPANY.
11 C. W. N. 583

——date of—

See PROSECUTION.
I. L. R. 34 Calc. 909

OFFICE-BROCAGE AGREEMENT.

See AGREEMENT OPPOSED TO PUBLIC POLICY. . I. L. R. 30 Mad. 530

OFFICIAL ASSIGNEE.

See CONTRACT. . I. L. R. 34 Calc. 289

See INSOLVENT. . I. L. R. 30 Mad. 145

OMISSION TO ARGUE QUESTION OF LAW.

See PRACTICE. . 11 C. W. N. 340

OMISSION TO POINT OUT MATERIAL EVIDENCE.

See JURY, TRIAL BY.
I. L. R. 34 Calc. 698

ONUS OF PROOF.

See AGRA TENANCY ACT, s. 201.
I. L. R. 29 All. 158

See COMPENSATION.
I. L. R. 34 Calc. 599

See MAHOMEDAN LAW.
I. L. R. 31 Bom. 165

See PENAL CODE (ACT XLV OF 1860), S. 456. . . I. L. R. 29 All. 46

See PRE-EMPTION. I. L. R. 29 All. 618

See SUIT FOR RENT IN DEPOSIT.
11 C. W. N. 380

See WAIVER. . . 11 C. W. N. 848

1.—*Onus of proof—Admission by party to suit, effect of, as shifting burden of proof—Admission not causing estoppel—Presumption as to admission by party—Right to rebut presumption—Question tried without specific issue - Remand - Civil Procedure Code, ss. 55, 562, 566.*—In a suit for property to which the plaintiff alleged he was entitled by inheritance from his natural father the defence was that he had been adopted into another family and therefore was no longer his natural father's heir, and this contention was supported mainly by the plaintiff's admissions made in deeds and other documents signed by him, to none of which, however, the defendant was a party. *Held,* by the Judicial Committee, that although the *onus* was on the defendant to prove the adoption the proof of the admissions shifted the *onus* on to the plaintiff on the principle stated in *Slatterie* v. *Pooley, 6 M. & W. 664, 669,* that "what a party himself admits to be true may reasonably be presumed to be so," and until the presumption was rebutted the fact admitted must be taken to be established. *Held,* also, that where, as in the present case, there was no estoppel, the defendant being no party to the deeds, the plaintiff could give evidence to rebut such presumption. *Heane* v. *Rogers, 9 B. & C. 577, 586 ; Newton* v. *Liddiard, 12 Q. B. 926 ; In re Simpson, L. R. 2 Ch. D. 72, 89,* and *Trinidad Asphalte Company* v. *Coryat, [1896] A. C. 587,* followed. In this case their Lordships held that the plaintiff, so far from rebutting the presumption, had, in order to account for the admission made in the documentary

ONUS OF PROOF—*concluded.*

evidence, put forward two different and inconsistent explanations, one of which was absurd and the other in its most important parts unproved and had failed to prove his title. Where no specific issue had been framed on the question of adoption, but the matter had been tried and determined without any objection on the part of the plaintiff, who had not been taken by surprise, but was fully informed by the defendant's lists of documents and from the cross-examination of his witnesses that the defence would be taken: *Held*, that under the circumstances it was undesirable that the case should be sent back to be re-tried on a special issue framed as to the adoption. CHANDRA KUNWAR *v.* CHAUDHRI NARPAT SINGH (1906).

I. L. R. 29 All. 184; L. R. 34 I. A. 27

2.—*Onus of proof—Mahomedan Law - Relinquishment of share—Voluntary settlement—Document whereby heirs give up their rights in the property in favour of one heir—Deed supported by valuable consideration -Power of revocation in a valuntary deed.*—In a suit to impeach a deed to which he has been a party, the *onus* lies on the plaintiff to make out a case for setting aside on equitable grounds a deed duly executed for valuable consideration. *Melbourne Banking Corporation* v. *Brougham, 7 App. Cas. 307, 311,* followed. ASHIDBAI *v.* ABDULLA (1906).

I. L. R. 31 Bom. 271

ONUS PROBANDI.

See ONUS OF PROOF.

ORAL AGREEMENT.

See EVIDENCE ACT (I OF 1872), S. 92, PROV. 4 . . I. L. R. 30 Mad. 231

ORDER SETTING ASIDE A SALE.

See SALE FOR ARREARS OF REVENUE.
I. L. R. 34 Calc. 677

OSTENSIBLE OWNER.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 41 . I. L. R. 29 All. 292

OUDH ESTATES ACT (I OF 1869).

See BIRT ZEMINDARS.
I. L. R. 29 All. 708; L. R. 34 I. A. 142

OVERCHARGE.

See RAILWAYS ACT.
I. L. R. 31 Bom. 534

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PARAMOUNT TITLE.

——claim of—

See MORTGAGE . . . . 11 C. W. N. 284

See RES JUDICATA.
I. L. R. 34 Calc. 868

PARDANASHIN LADY.

—— deeds executed by—

See MAHOMEDAN LAW.
I. L. R. 31 Bom. 165

PARDON.

—*Pardon granted after accused has had an opportunity of cross-examining the witnesses for the prosecution—Withdrawal of pardon and subsequent commitment.*—Where a pardon was tendered by a Magistrate to an accused person after he had had an opportunity, as an accused person, of cross-examining the witnesses for the prosecution, and on its appearing that he had not made a full and true disclosure of the facts of the case, such pardon was withdrawn and he was committed along with his co-accused to the Court of Session: *Held*, that the commitment was not open to objection. *Queen-Empress* v. *Brij Narain Man, I. L. R. 20 All. 529,* followed. EMPEROR *v.* BUDHAN (1906).

I. L. R. 29 All. 24

PARENT AND CHILD.

See FIDUCIARY RELATIONSHIP.

PARTIES.

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1. ADDING PARTIES TO SUITS. . . 304
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I. L. R. 30 Mad. 215

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See CIVIL PROCEDURE CODE.
I. L. R. 31 Bom. 516

See PLAINTIFF, SUBSTITUTION OF.
I. L. R. 34 Calc. 612

1. ADDING PARTIES TO SUITS.

1.—*Limitation Act (XV of 1877), s. 22—Addition of party by Court after period of limitation—Effect—Civil Procedure Code (Act XIV of 1882), s. 32—Mortgage suit—Remedy of mortgagee against purchaser of portion of mortgaged property, not made a party within time—Bengal Tenancy*

PARTIES—*concluded.*

Act (VIII of 1885), s. 167—Sale of portion of tenure or holding—Annulment of encumbrances.—When in a suit a person is added as a party defendant at the instance of the Court after the period of limitation applicable to the suit has expired, s. 22 of the Limitation Act applies and bars the plaintiff's remedy as against the added defendant. *Girish Chunder Sasmal* v. *Dwarka Nath Dinda, I. L. R. 24 Calc. 640 ; Fakira Pasban* v. *Bibi Azimunnissa, 4 C. W. N. 459 ; s.c. I. L. R. 27 Calc. 540,* overruled. *Oriental Bank Corporation* v. *Chariol, I. L. R. 12 Calc. 642,* explained. *Imam Ali* v. *Baij Nath Ram Sahu, 10 C. W. N. 551 : s.c. 3 C. L. J. 576,* approved. Where in the course of a suit to enforce a mortgage, but more than 12 years after the date fixed in the mortgage-bond for repayment of the mortgage-money, the Court directed that a purchaser of a portion of the mortgaged property be added as a party defendant : *Held,* that the suit as against the added defendant was barred by limitation. *Quære* : Whether the portion of the mortgaged property in the hands of the added defendant was thereby exempted from liability under the mortgage. RAMKINKAR BISWAS *v.* AKHIL CHANDRA CHOWDHURI (1907) . . . **11 C. W. N. 350**

2.—*Parties, Joinder of—Suit in ejectment—Persons in actual possession necessary parties.*—In a suit in ejectment the persons in actual possession need be joined as parties. BANUBI *v.* NARSINGRAO (1906) . . . . **I. L. R. 31 Bom. 250**

3.—*Mortgage suit—Necessary party.*—When a person who is not a proper party to a suit allows himself to be made a party defendant without any objection, and an issue relating to him is raised and decided in the suit, he cannot change front and insist on the Appellate Court that an error has occurred in making him a party and that the issue was not triable in the action. BHAJU CHOWDHURY *v.* CHUNI LAL MARWARI (1906). **11 C. W. N. 284**

2. SUBSTITUTION OF PARTIES.

4.—*Civil Procedure Code (Act XIV of 1882), s. 27—Court has power to order right persons to be substituted as plaintiffs even when original plaintiff had no right to sue.*—Under s. 27 of the Code of Civil Procedure when a suit is instituted in the name of a wrong person as plaintiff by a *bonâ fide* mistake, the Court has power to substitute the names of right persons as plaintiffs and this power is not excluded in cases where the person originally suing has no right to institute the suit. *Chunder Coomar Roy* v. *Gocool Chunder Bhuttacharjee, I. L. R. 6 Calc. 370,* referred to. KRISHNA BOI *v.* THE COLLECTOR AND GOVERNMENT AGENT, TANJORE (1907) . **I. L. R. 30 Mad. 419**

PARTITION.

See CIVIL PROCEDURE CODE, s. 396.
I. L. R. 29 All. 235

See HINDU LAW.

PARTITION—*continued.*

——costs of—

See COSTS . . **I. L. R. 34 Calc. 878**

——instrument of—

See JOINT POSSESSION.
11 C. W. N. 143

See STAMP ACT.
I. L. R. 31 Bom. 68

——right to—

See LIMITATION ACT (XV OF 1877), SCH. II, ART. 127. **I. L. R. 30 Mad. 201**

1.—*United Provinces Land Revenue Act (Local III of 1901), ss. 110, 111, 233 (k)—Objections not raised before Revenue Court—Suit in Civil Court for declaration of title—Jurisdiction.*—On the 12th of March 1904 defendants applied to the Revenue Court for partition of their share in two mahals. Proclamation was issued on that application calling upon the opposite party to appear on the 18th of April 1904, and state their objections, if any, to the partition. The opposite party did not appear in the Revenue Court, but on the 20th of April 1904 instituted a suit in a Civil Court against the applicants for partition asking for a declaration of their exclusive possession over part of the property, the subject-matter of the defendants' application for partition in the Revenue Court. *Held,* that the plaintiffs' suit was not maintainable. *Muhammad Sadiq* v. *Laute Ram, I. L. R. 23 All. 291,* and *Khasay* v. *Jugla, I. L. R. 28 All. 432,* referred to. NATHI MAL *v.* TEJ SINGH (1907). **I. L. R. 29 All. 604**

2.—*Co-sharer—Partition, decree for.*—A lessee held certain lands in a village under three separate temporary leases from three undivided co-sharers of the village. On the expiry of one of the leases, the lessor in question sued for *khas* possession on partition of his separated share. His other co-sharers who with the lessee has been made parties to the suit raised no objection. *Held,* that there was no bar to a decree for partition being made in the case. But the plaintiff ought to pay the entire costs of the partition as a fresh partition of the entire mouzah may be necessary on the expiry of the other leases. RAM LOCHI KOERI *v.* HERBERT COLLINGBRIDGE (1907) . . . . **11 C. W. N. 397**

3.—*Partition—Hindu Law—Expenses for ceremonies of brother's sons—Share of step-mother—Value of stridhan to be deducted from share—Expenses for ceremonies of grandchildren.*—In a suit for partition brought by a Hindu against his father and brothers, the brothers are entitled to have set apart from the family property a sum sufficient to defray the expenses of their prospective thread, betrothal, and marriage ceremonies, such sum to be calculated according to the extent of the family property. A father's wife is on such partition entitled to a share equal to that of a son, but from her share must be deducted the value of any *stridhan*

PARTITION—*concluded.*

received by her as a gift from her father-in-law or husband. The children of a brother on such partition are not entitled to any sum for the performance of their prospective thread, betrothal or marriage ceremonies. JAIRAM *v.* NATHU (1906)
I. L. R. 31 Bom. 54

4.—*Partition, suit for—Right of a putnidar of a small share of an estate to claim partition.*—In the absence of proof of inconvenience to other co-sharers a *putnidar* whose right extends over only a fractional share of one of many mouzahs in the zemindari, is entitled to maintain a suit for partition. *Radha Kanta Shaha* v. *Bipro Das Roy, 1 C. L. J. 40,* and *Barahi Debi* v. *Debkamini Debi, I. L. R. 20 Calc. 682,* referred to. UMA SUNDARI DEBI *v.* BENODE LAL PAKRASHI (1907).
I. L. R. 34 Calc. 1026

5.—*Partition, suit for—Dismissal of suit—Defendants cannot claim partition of their shares in that suit.*—Where a plaintiff brings a suit for partition and fails, it is not open to any of the defendants to claim that the partition suit should go on in order that the share of one or more of such defendants may be determined. ASHIDBAI *v.* ABDULLA (1906) . . I. L. R. 31 Bom. 271

6.—*Commission to make partition—Issue of commission to one person only.*—A Court issuing under s. 396 of the Code of Civil Procedure a commission to make partition of immoveable property not paying revenue to Government, cannot legally issue such commission to one commissioner only. *Per* RICHARDS, *J.*—But there is nothing to prevent the parties to partition proceedings agreeing that one commissioner only should be appointed; nor does it follow that all the partitions that have been made are invalid by reason of the fact that only one commissioner has been appointed. MULCHAND *v.* MUHAMMED ALI KHAN (1906).
I. L. R. 29 All. 235

PARTITION ACT (IV OF 1893).

—— s. 4—

—*Dwelling house belonging to an undivided family—Mahomedans.*— *Held,* that the expression "a dwelling house belonging to an undivided family" as used in s. 4 of the Partition Act, 1893, is not applicable to a house belonging to a Mahomedan family. *Amme Raham* v. *Zia Ahmad, I. L. R. 13 All. 282,* referred to. HASHMAT ALI *v.* MUHAMMAD UMAR (1907) . . I. L. R. 29 All. 308

PARTNERSHIP.

— account of—

—*Settled accounts—Error— Re-opening—Surcharge and falsification—General words of release—What passes.*—*B.* and *S.* partners had the partnership accounts strictly adjusted and R39,465-7-0 was found due to *B.* By a deed of assignment *B.* in consideration of R34,000 assigned and released

PARTNERSHIP—*concluded.*

his share in the firm to *S.* By common mistake Government promissory notes for R7,000 were omitted from the accounts. On discovery of the mistake *B.* sued for a share of the notes. *Held,* that either the whole account might be re-opened or leave given to *B.* to surcharge and falsify. The latter is the more proper course on the facts of this case. *McKellar* v. *Wallace, 5 Moo. I. A. 372, Pritt* v. *Clay, 9 Beav. 503, Gething* v. *Keighley, 9 Ch. D. 547,* referred to. General words of release in a deed can only operate to pass what the parties had in contemplation and not something with which they had no intention of dealing. *L. & S. N. R. Co.* v. *Blackmore, L. R. 4 H. L. 610, Turner* v. *Turner, 14 Ch. D. 829,* followed. BANEY MADHUB MULLICK *v.* SUBAL CHUNDER LAW (1907) . . . . 11 C. W. N. 776

PART-PAYMENT.

——of mortgage debt——

See LIMITATION . 11 C. W. N. 107

——of debt—

—*Acknowledgment.*—A part-payment of the principal of a debt must appear in the handwriting of the person making the part-payment and not in that of any other person, however authorized. *Held,* also, that the mere crediting of interest in a bankers books cannot be regarded, for the purpose of saving limitation, as equivalent to a payment of interest. DHARAM DAS *v.* GANGA DEVI (1907).
I. L. R. 29 All. 773

PATNIDAR AND BENAMIDAR.

See LIMITATION.
I. L. R. 34 Calc. 711

PATTA, OBJECTION TO.

See LANDLORD AND TENANT.
I. L. R. 30 Mad. 498

PAUPER.

See CIVIL PROCEDURE CODE.
I. L. R. 31 Bom. 10

See PAUPER SUIT.

PAUPER SUIT.

See CIVIL PROCEDURE CODE, s. 411.
I. L. R. 29 All. 537

PENAL CODE (ACT XLV OF 1860).

——ss. 62, 124A—

See CONFISCATION.
I. L. R. 34 Calc. 986

PENAL CODE (ACT XLV OF 1860)— *continued.*

——ss. 62, 406—

—Criminal breach of trust—Sentence.—Held, that the special sentence provided for by s. 62 of the Indian Penal Code is a sentence which should only be inflicted in rare cases—those in which crimes of an atrocious nature are exposed or in which offences have been committed under aggravated circumstances. *Queen* v. *Mahomed Akhir, 12 W. R. Cr. R. 17,* followed. EMPEROR *v.* AMRIT LAL (1906) . . . . **I. L. R. 29 All. 25**

——s. 84—

—Unsoundness of mind—Knowledge of the nature of the act.—Where the accused cut his wife's throat without any rational motive, and was captured at once without any attempt on his part to escape or offer resistance, and the evidence showed that before the commission of the offence he suffered from a failure of reasoning powers, and also that he entertained delusions as to dangers which threatened his wife: *Held,* that the facts proved unsoundness of mind which prevented the accused from knowing the nature of his act, and that s. 84 of the Penal Code applied. DIL GAZI *v.* EMPEROR (1907).
I. L. R. 34 Calc. 686

——s. 99—

See PRIVATE DEFENCE, RIGHT OF.

——s. 124A—

See SEDITION. **I. L. R. 34 Calc. 991**

—Sedition—"Swaraj," incitement to secure.—The incitement of the members of a public meeting to exert themselves to secure *"swaraj"* does not amount to the offence of sedition under s. 124A of the Penal Code, and is consequently not within the purview of s. 108 of the Criminal Procedure Code. BENI BHUSHAN ROY *v.* EMPEROR (1907).
I. L. R. 34 Calc. 991

——s. 143—

See UNLAWFUL ASSEMBLY.

——s. 153—

—"Wantonly"—Act No. V of 1861 (Police Act), s. 30—Disobedience to orders of police as to conduct of a procession.—Where certain persons taking part in a religious procession gratuitously disobeyed the orders of the police concerning the manner in which such procession was to be conducted, with the result that a riot was only averted by bringing armed police upon the scene, it was *held* that the persons concerned acted—though not "malignantly"—yet "wantonly" within the meaning of s. 153 of the Indian Penal Code, and were properly convicted under that section. *Held,* also, that a conviction under s. 153 of the Indian Penal Code does not warrant the taking of action under s. 106 of the Code of Criminal Procedure. EMPEROR *v.* HUSAIN BAKSH (1907).
I. L. R. 29 All. 569

PENAL CODE (ACT XLV OF 1860)— *continued.*

——s. 161—

—Bribe—"In the exercise of official functions"—Motive or reward—Essentials of the offence.—S 161 of the Indian Penal Code (Act XLV of 1860) requires proof that an official has obtained, as a motive or reward for official conduct, an illegal gratification for himself or another. That other may or may not be an official, and therefore may be wholly unconnected with the official conduct. The conduct which is contemplated as the consideration for the bribe must be that of the official obtaining it. This is clear from the phrase "in the exercise of *his* official functions." To obtain a bribe as a motive or reward for another's conduct does not fall within the section though it may be an abetment of that offence or cheating. The performance of the act which is consideration for the bribe is not essential But it is essential that the bribe should be obtained "as a motive or reward." That phrase evidently means on the understanding that the bribe is given in consideration of some official act or conduct. Such an understanding need not be proved by explicit evidence of any precise agreement. It may be inferred from circumstances. EMPEROR *v.* BHAGWANDAS (1907) . . . **I. L. R. 31 Bom. 335**

——ss. 182, 211—

—False information—False charge—Distinction between the two offences.—The accused sent a telegram to the Collector of Ratnagiri, in his capacity of the head of the Municipality at Vengurla, to the effect that: "Head Master, English School (Vengurla), misappropriated Rs. 168 of fees since October. Please investigate yourself soon." For this, the accused was convicted under s. 182 of the Indian Penal Code (Act XLV of 1860), on the grounds that he had no probable cause for making the assertion contained in the telegram, and that he probably knew that a peon had confessed that he was guilty of the misappropriation. *Held,* that on these facts the charge under s. 182 of the Code could not be legally sustained. The offence made punishable by s. 182 of the Indian Penal Code is a distinct offence from that described in s. 211 of the Code, which relates to an attempt to put the Criminal Courts in motion against another person. The action which s. 211 renders penal is action entailing very serious consequences, and therefore the more serious consideration is required on the part of the individual who takes it. It is sufficient in such cases for the prosecution to establish that there was no just or lawful ground for the action taken and that the accused knew this. But something more is required in the case of action referred to in s. 182. To bring a case within that section it is necessary for the prosecution to prove, not merely absence of reasonable or probable cause for giving the information, but a positive knowledge or belief of the falsity of the information given. EMPEROR *v.* RAMCHANDRA (1906).
I. L. R. 31 Bom. 204

PENAL CODE (ACT XLV OF 1860)— *continued.*

——s. 192—

—Fabricating false evidence—Definition.—One Cheda Lal, whose brother Debi was an accused person, applied to the Court on behalf of the accused asking that the witnesses for the prosecution might first of all be made to identify Debi. The Court assenting to this request, Cheda Lal produced before the Court ten or twelve men, none of whom could be identified as Debi by any of the prosecution witnesses. Upon being asked by the Court where Debi was, Cheda Lall pointed out a man who, upon further investigation, was discovered to be wearing a false moustache and to be not Debi at all, but one Chimman. *Held,* upon these facts, that Cheda was rightly convicted of fabricating false evidence having regard to the definition contained in s. 192 of the Indian Penal Code. EMPEROR *v.* CHEDA LAL (1907) . **I. L. R. 29 All. 351**

——ss. 192, 193—

See FABRICATING FALSE EVIDENCE.

—— s. 211—

—False charge—Improper order for prosecution.—It is not in every case, which a Magistrate considers to be false, that he should direct under s. 476 of the Criminal Procedure Code a prosecution under s. 211, Penal Code. Each case must be judged by its own facts. Where, therefore, the Magistrate and the Judge came to different conclusions upon the evidence which was of a doubtful character and the complainant was a boy of 12 years of age, it was held that the Magistrate should not have directed his prosecution, and his order was accordingly set aside. EMPEROR *v.* GOPAL BARIK (1906) . **I. L. R. 34 Calc. 42**

—False charge—Practice—Opportunity to be given to prove charge before prosecuting.—Where it is intended to prosecute any person under s. 211 of the Indian Penal Code such person ought to be given an opportunity of substantiating, if he can, the charge which he has brought before he is prosecuted. *Queen-Empress* v. *Ganga Ram, I. L. R. 8 All. 38,* and *Queen-Empress* v. *Raghu Tiwari, I. L. R. 15 All. 336,* followed. EMPEROR *v.* TULA (1907). **I. L. R. 29 All. 587**

——s. 223—

—Criminal Procedure Code, s. 54—Escape from lawful custody—Chaukidar.—The police of an adjoining Native State arrested in British territory one Paran Singh suspected of having committed an offence in the Native State, and made him over to one Debi, a chaukidar, from whose custody he escaped. *Held,* that neither the original arrest nor the subsequent custody by the chaukidar were lawful, and therefore that the chaukidar could not properly be convicted under s. 223 of the Indian Penal Code. *Empress of India* v. *Kallu, I. L. R. 3 All. 60, Kalai* v. *Kalu Chowkidar, I. L. R. 27 Calc. 366,* and *King-Emperor* v. *Johri, I. L. R. 23 All. 266,* referred to. EMPEROR *v.* DEBI (1907). **I. L. R. 29 All. 377**

——s. 225—

—Criminal Procedure Code, ss. 59 and 60—Rescue from lawful custody—Definition.—A private person lawfully arrested a thief in the act of committing theft and made him over to a village chaukidar to be taken to the nearest police station. On the way to the police station three persons seized the chaukidar, and the thief made his escape. *Held,* that the rescuers were rightly convicted under s. 225 of the Indian Penal Code. The arrest of the thief having been in the first instance lawful, the requirements of s. 39 of the Code of Criminal Procedure were sufficiently complied with by the person arresting sending him to the police station in the custody of the chaukidar. *Queen-Empress* v. *Potadu, I. L. R. 29 Calc. 33,* followed. *King-Emperor* v. *Johri, I. L. R., 11 Mad. 480,* referred to. EMPEROR *v.* PARSIDDHAN SINGH (1907) . . **I. L. R. 29 All. 575**

——ss. 230, 420—

—"Coin"—Uttering false coin—Cheating.—Where the offence charged consisted of selling or pawning as genuine gold mohars of the reign of Shahjahan, silver rupees of that reign which had been gilt or in some way covered over with gold, it was *held* that the offence would be that of cheating and not that of uttering false coin. A gold mohar of the reign of Shahjahan cannot be deemed to be "coin" within the meaning of s. 230 of the Indian Penal Code, as it is not used for the time being as money. *Regina* v. *Bapu Yadav, 11 Bom. H. C. 172,* followed. *Queen* v. *Kunj Beharee, 5 N.-W. P. H. C. 187,* distinguished. EMPEROR *v.* KHUSHALI (1903). **I. L. R. 29 All. 141**

——s. 268—

—Public nuisance.—In order to constitute an offence under s. 268 of the Penal Code it is not necessary that the alleged nuisance should produce smells injurious to health, it is sufficient if they be offensive to the senses. *Rex* v. *Neil, 2 C. and P. 485,* approved of. To allow a large stack of bones to remain uncovered in the open for a long time so as to become rotten and to emit a smell noxious to people living in or passing by the vicinity is not an act which a bonemill manager is entitled to do in carrying on his trade in a reasonable way, and by allowing such act to be done he would be guilty of committing a public nuisance. BERCKEFELD *v.* EMPEROR (1906) . . **I. L. R. 34 Calc. 73**

——s. 302—

See MURDER.

——ss. 304, 325—

—Assault by three persons armed with lathis—Intention—Culpable homicide—Grievous hurt.—Three persons attacked a fourth with lathis, and one

PENAL CODE (ACT XLV OF 1860)—*continued.*

of the assailants struck a blow which fractured the skull of the person attacked and caused his death, but the evidence left it in doubt as to which of the three assailants struck that blow. *Held,* that the offence of which the three assailants were guilty was grievous hurt rather than culpable homicide not amounting to murder. *Queen-Empress* v. *Duma Baidya, I. L. R. 19 Mad. 483,* followed. EMPEROR *v.* BHOLA SINGH (1907) . **I. L. R. 29 All. 282**

——s. 325—

See JURY, TRIAL BY.
I. L. R. 34 Calc. 698

——s. 342—

See WRONGFUL CONFINEMENT.
I. L. R. 30 Mad. 179

——s. 353—

See ACT (LOCAL) No. III OF 1901, ss. 147. 227 AND 228 . **I. L. R. 29 All. 272**

——ss. 363, 366, 498—

—Criminal Procedure Code (Act V of 1898), ss. 227, 228, 199, 238, 537—Charge—Addition of a charge—Irregularity—Penal Code (Act XLV of 1860), ss. 363, 366, 498.—The accused was tried on charges under ss. 363 (kidnapping from lawful guardianship) and 366 (kidnapping a woman) of the Indian Penal Code (Act XLV of 1860). At the conclusion of the evidence to establish those charges and after the evidence for the defence had been recorded, the Court added a charge under s. 498 (enticing a married woman) of the Code, notwithstanding the objection by the accused's counsel. The trial ended in conviction of the accused on all the three charges. The accused appealed contending that the procedure adopted was contrary to the provisions of s. 199 of the Criminal Procedure Code and to the spirit of s. 238 of the Code. *Held,* (1) that the procedure adopted in the case was not regular. The additional charge framed at the stage it was framed, notwithstanding the objection by the accused's counsel, was prejudicial to the accused; (2) that the conviction under s. 498 of the Indian Penal Code should be set aside; and further investigation be made into the remaining charges. EMPEROR *v.* ISAP MAHOMED (1906) . . **I. L. R. 31 Bom. 218**

——s. 411—

—Possession of stolen property—Joint Hindu family—Liability of head of the family or managing member.—Stolen property consisting of a considerable quantity of cloth, weighing about five maunds, was discovered on search by the police in a locked room in a house belonging to, and inhabited by, a joint Hindu family composed of a father, son and grandson. The son was found to be the managing member of the family, and the key of the room in which the stolen property was found was produced by him. The circumstances were such that it was very improbable that the cloth could possibly have been placed where it was found without the connivance of some or all of the members of the family. *Held,* that under the above circumstances the conviction of the managing member of the family under s. 411 of the Indian Penal Code was a proper conviction. *Queen-Empress* v. *Sangam Lal, I. L. R. 15 All. 129,* referred to. EMPEROR *v.* BUDH LAL (1907) . . . **I. L. R. 29 All. 598**

——ss. 425, 426—

—Mischief—Act (Local) No. 1 of 1900 (N.-W. P. and Oudh Municipalities Act), s. 167.—Certain cattle belonging to one *M. H.* upon various occasions when in charge of a servant of M. H. strayed, or were driven, into the Government gardens at Saharanpur and there caused damage. *Held,* that *M. H.* could not on these facts be convicted of the offence of mischief. *Forbes* v. *Grish Chander Bhattacharjee, 14 W. R. 31,* and *Empress* v. *Bai Baya, I. L. R. 7 Bom. 126,* followed. *Held,* also, that s. 167 of the Municipalities Act, 1900, did not apply, that section being one dealing with offences against the person. *King-Emperor* v. *Patan Din, Weekly Notes, 1905, 19,* followed. EMPEROR *v.* MEHDI HASAN (1907).
I. L. R. 29 All. 565

——s. 447—

See CRIMINAL TRESPASS.

—— s. 456—

—Lurking house-trespass by night—Intention—Burden of proof.—The accused was found inside the house of the complainant at midnight, and his presence was discovered by the wife of the complainant crying out that a thief was taking away her *hansli.* The evidence of the complainant clearly showed that the accused was not there with the consent, or at the invitation, or for the pleasure of the complainant. *Held,* that the accused was properly convicted under s. 456 of the Indian Penal Code, it being for him to show that his intention was under the circumstances innocent. *Brij Basi* v. *The Queen-Empress, I. L. R. 19 All. 74,* distinguished. *Balmakund Ram* v. *Ghansamram, I. L. R. 22 Calc. 891,* followed. EMPEROR *v.* ISHRI (1906).
I. L. R. 29 All. 46

——s. 471—

See FORGERY. . **11 C. W. N. 838**

——ss. 482, 486—

See TRADE-MARK. . **11 C. W. N. 887**

——s. 494—

See BIGAMY. . **I. L. R. 30 Mad. 550**

——ss. 499, Excep. 3, 6, 9; 500—

—Defamation—Comment—Right of fair comment—Comment should be suggested by and confined to the work under review—Good faith, tests of—Malice, interpretation of the term.—The word "malice" in the legal use of that term is not limited to hostility of feeling, but by virtue of its

PENAL CODE (ACT XLV OF 1860)— *continued.*

etymological origin, extends to any state of the mind which is wrong or faulty (whether evidenced in action by excess or defect), such as would be unjustifiable in the circumstances and incompatible with thoroughly innocent intentions. It is not necessary that such impropriety of feeling should in all cases be established by evidence extrinsic to the comment which is the subject of the complaint. For, whether fair comment is to be regarded as falling under a branch of the law of privilege or not, it cannot excuse an injury arising not from the mere act of criticism, but from a state of mind in the critic which is in itself unjustifiable and the excuse may be so forfeited either by reason of an evil intent in him, or by reason of mere recklessness in making an unwarrantable assertion. For then the comment would not be fair comment at all. Apart from extrinsic evidence of malice, protection must be withheld even from what purports to be criticism, if it states as a fact to be inferred from the book criticised, an imputation for which the book itself contains absolutely no foundation whatever. The right of fair comment involves two essentials, first that the imputation should be comment on the work criticised, and second that it should be "fair"—that is to say, that if it professes to be an inference drawn from the contents of that work, it must be an inference which it is possible to draw therefrom. "Good faith" requires not, indeed, logical infallibility, but due care and attention. But how far erroneous actions or statements are to be imputed to want of due care and caution must, in each case, be considered with reference to the general circumstances and the capacity and intelligence of the person whose conduct is in question. It is only to be expected that the honest conclusions of a calm and philosophical mind may differ very largely from the honest conclusions of a person excited by sectarian zeal and untrained to habits of precise reasoning. At the same time it must be borne in mind that good faith in the formation or expression of an opinion, can afford no protection to an imputation which does not purport to be based on that which is the legitimate subject of public comment. The object of exception 6 to s. 499 of the Indian Penal Code (Act XLV of 1860) is that the public should be aided by comment in its judgment of the public performance submitted to its judgment. Comment otherwise defamatory is justified on this ground alone. The comment must, therefore, make it clear to the public that decision is invited only on such evidence as is supplied by the public performance. It follows that an imputation on an author made by a critic without reference, express or implied, to the work under criticism, if in terms so general as to be capable of conveying an unfavourable impression of him apart from what appears in his work, cannot be justified by the critic on the ground that his intention was to base his imputation solely on the work reviewed, and that he had in his mind passages therein supporting the imputation. The responsibility of the critic is to be gauged by the effect which his comment is calculated to produce and not by what he says was

PENAL CODE (ACT XLV OF 1860)— *concluded.*

his intention. It is not enough that he should intend to form his opinion on the work before him. He is also bound in the words of the exceptions to express his opinion with due care and caution, and to give the public no ground for supposing that he is speaking of anything but the performance submitted to its judgment. EMPEROR *v.* ABDOOL WADOOD (1907) . . . . **I. L. R. 31 Bom. 293**

——s. 500—

See DEFAMATION. . **11 C. W. N. 390**

PENALTY.

See COMPOUND INTEREST—DECREE.
I. L. R. 34 Calc. 150
L. R. 34 I. A. 9

PENSION.

See PENSIONS ACT.

1.—*Pensions Act (XXIII of 1871), ss. 3, 11, 12—S. 12 applies only to pensions as stated in s. 11 and does not extend to grant of land revenue as defined in s. 3.*—S. 12 of the Pensions Act prohibits only the assignment of any money payable on account of any such pension, pay or allowance as is mentioned in s. 11, and the pensions referred to in s. 11 are periodical allowances made by Government on political considerations, or on account of past services or present infirmities or as a compassionate allowance. Payments of money for purposes other than those stated may be 'grants of money or land revenue' within the meaning of s. 3, but the provisions of s. 12 will not apply to them. *The Secretary of State for India* v. *Khemchand Jeychand, I. L. R. 4 Bom. 432,* followed. SUBBAYA MUDALI *v.* VELAYUDA CHETTY (1906).
I. L. R. 30 Mad. 153

2.—*Pensions Act (XXIII of 1871), s. 4—Suit for maintenance under an agreement by which claim to pension and other properties is relinquished not a suit relating to pension and is cognisable by Civil Courts.*—Where a widow entitled to a portion of a pension and other properties, relinquishes such right in consideration of a maintenance allowance, which is not made payable out of the pension and is not dependent on it, a suit by her to recover such allowance is not a suit relating to pension, within the meaning of s. 4 of the Pensions Act and is cognisable by Civil Courts. There is nothing in the Pensions Act which prohibits such relinquishment by the widow or the agreement to pay her maintenance. RAJA VENKATANARASIMHA RAMACHANDRA ROW *v.* RAJA LAKSHMINARASAMMA ROW (1906).
I. L. R. 30 Mad. 266

PENSIONS ACT (XXIII OF 1871).

See PENSION.

——ss. 3, 11, 12—

See PENSION. I. L. R. 30 Mad. 153

——s. 4—

—*Cash allowance from Government—Suit to recover a sum of money from the cash allowance—Suit based upon an agreement.*—The plaintiff sued to recover a sum of money as the amount of her maintenance. She claimed under an agreement whereby the defendants agreed to pay her R52 every year for her maintenance out of a cash allowance which was received by the latter from Government. It was objected to the suit that it was bad in absence of a certificate from the Collector under s. 4 of the Pensions Act, 1871. *Held*, that the suit could not be taken cognizance of without a certificate under s. 4 of the Pensions Act (XXIII of 1871). The words of the section were wide enough to include any suit to enforce such a claim provided it related to a pension or grant of money or of land revenue; it was immaterial whether the claim was based on an agreement between the parties or arose out of any other legal right or liability and whether it was a claim for a share by way of partition or maintenance or otherwise. DAMODAR *v.* SATYABHAMA BAI (1907) . . . I. L. R. 31 Bom. 512

PERMANENT TENANT.

See BHAGDARI AND NARWADARI ACT.
I. L. R. 31 Bom. 183

See LANDLORD AND TENANT.

PERMANENT TENURE.

See LANDLORD AND TENANT.

——presumption as to—

See LANDLORD AND TENANT.
I. L. R. 34 Calc. 902

—*Permanent tenure, proof of—Origin of grant not known—Grant for residential purposes—Substantial structures.*—Where the original nature of the grant was unknown and it was found that the predecessors in interest of the defendants who were purchasers in execution of a decree were tenants on the land and were in occupation for nearly sixty years, and that they raised substantial structures on the land and the grant was for the purpose of residence: *Held*, that the lower Courts were justified in drawing the inference that the holding was permanent. GRANT *v.* ROBINSON (1906).
11 C. W. N. 242

PERSONAL COVENANT.

See LIMITATION.
I. L. R. 34 Calc. 672

PLAINT.

1. REJECTION OF PLAINT.

See COURT-FEE, INSUFFICIENCY OF.
I. L. R. 29 All. 749

—— amendment of—

See MISJOINDER.
I. L. R. 34 Calc. 662

——return of—

See PUTNI SALE. . 11 C. W. N. 765

1. REJECTION OF PLAINT.

1.—*Civil Procedure Code, s. 54—Procedure—Plaint not to be rejected in part.*—*Held*, that under s. 54 of the Code of Civil Procedure a Court cannot reject a plaint in part. RAGHUBANS PURI *v.* JYOTIS SWARUPA (1907). I. L. R. 29 All. 325

2.—*Civil Procedure Code (Act XIV of 1882) s.54, cl.(b)—Plaint filed with insufficient Court-fee—Extension of time by Court—Payment of deficient Court-fee after the time allowed—Registration of plaint, effect of—Subsequent rejection.*—*Held* by the Full Bench, that it is competent to a Court to reject a plaint under s. 54, cl. (*b*) of the Civil Procedure Code after the plaint has been admitted and duly registered. *Per* MACLEAN, *C.J.*, as a general rule, when once the Court has admitted and registered a plaint, it cannot subsequently reject it. A plaint was filed with insufficient Court-fees. The Court directed the plaintiff to put in the deficit Court-fees within a time fixed by it. He failed to do so, but put in the Court-fee on a subsequent date, and the plaint was admitted and duly registered. At the time of the hearing of the suit on the objection of the defendant the plaint was rejected. *Held*, by the Full Bench (RAMPINI *J.*, dissenting), that in the circumstances of the present case, the plaint might well be regarded as presented and filed on the date it was registered, with all the consequences that would follow in regard to limitation or otherwise from its being filed on that date. PADMANUND SING *v.* ANANTLAL MISSER (1906) . . I. L. R. 34 Calc. 20

PLAINTIFF.

——misjoinder of—

See MISJOINDER. I. L. R. 34 Calc. 662

—— substitution of—

—*Parties, substitution of—Assignment—Assignee substituted after period of limitation—Civil Procedure Code (Act XIV of 1882), s. 372—Limitation Act (XV of 1877), s. 22.*—In a suit brought within the period of limitation the name of the assignee of the original plaintiff was, after expiry of the period, substituted for that of the latter which was struck off the record. *Held*, that s. 22 of the Limitation Act was

PLAINTIFF—*concluded.*

applicable, and that if a person who has not been on the record is substituted as a plaintiff in the place of the original plaintiff under s. 372 of the Code of Civil Procedure, the person so substituted must be taken to be brought on the record subject to the law of limitation applicable to the case. That section does not exclude the operation of s. 22 of the Limitation Act and, except in the case of the legal representative of a deceased party, the person substituted as plaintiff must be regarded as a new plaintiff within the meaning of the latter section. *Harak Chand* v. *Deonath Sahay, I. L. R. 25 Calc. 409*, approved. *Suput Singh* v. *Imrit Tewari, I. L. R. 5 Calc. 720*, disapproved and distinguished. ABDUL RAHMAN *v.* AMIR ALI (1907) . **I. L. R. 34 Calc. 612**

PLEADER.

See LEGAL PRACTITIONERS' ACT (XVIII OF 1879), SS. 13 AND 14.
I. L. R. 29 All. 61

——remuneration of—

—Legal Practitioners' Act (XVIII of 1879), s. 28—Pleader—Agreement to allow legal fees to be set off against money advanced to a pleader by a client.—A client advanced certain money to a pleader who subsequently appeared for the lender in various cases. On suit by the lender to recover his loan, the pleader set up an agreement entitling him to set off against the money borrowed his fees for professional services. *Held*, that the pleader was entitled to a set-off in the shape of reasonable remuneration for services actually rendered, although there was no such agreement as required by the Legal Practitioners' Act, s. 28. *Raghunath Saran Singh* v. *Sri Ram, I. L. R. 28 All. 764*, and *Raziud-din* v. *Karim Bakhsh, I. L. R. 12 All. 169*, referred to. CHHANNU LAL *v.* ASHARFI LAL (1907). **I. L. R. 29 All. 649**

PLEADINGS.

See WRITTEN STATEMENT.

— Although the rule is that proofs must correspond with the allegations in the pleadings, the requirement in that behalf is fulfilled if the substance of the declaration is proved. No variation ought to be regarded as material, where the allegation and proof substantially correspond. *Nash* v. *Towne, 5 Wallis 689; 6 Rose's Notes 758*, followed. BELBHADAR PERSHAD SINGH *v.* SHEIKH BARKAT ALI (1906).
11 C. W. N. 85

POLICE.

See BOMBAY CITY POLICE ACT.
I. L. R. 31 Bom. 480

POLICE ACT (V OF 1861).

——s. 30—

See PENAL CODE, S. 153.
I. L. R. 29 All. 569

POLICE CUSTODY.

—Detention in police custody—Duration of detention—Criminal Procedure Code (Act V of 1898), s. 167 (3)—Order for such detention.—S. 167 (3) of the Code of Criminal Procedure, by requiring a Magistrate to record his reasons for authorising detention in police custody, contemplates that the Magistrate shall consider whether on the facts placed before him there are good grounds for allowing such detention. There should at least be something to satisfy the Magistrate that the presence of the person arrested while the police investigation was being held would assist in some discovery of evidence and that his presence was indispensable for this purpose, as, for instance, when he had confessed before the Magistrate and had pointed out some of the property stolen in the offence and was wanting to do more but was unable to do so because the police were by law unable without a special order to detain him. In ordering further detention in police custody when there are good reasons for such an order a Magistrate should invariably limit the term as much as possible to what may be necessary for the object in view. EMPEROR *v.* KAMPU KUKI (1902) . . **11 C. W. N. 554**

POLICE REPORT.

See CRIMINAL PROCEDURE CODE, S. 145.
11 C. W. N. 835

PORAMBOKE LANDS.

—Water in poramboke lands not Sircar water.—Water in poramboke lands belonging to *mirasidars* cannot be said to be Sircar water and taxed as such. NATESA GRAMANI *v.* VENKATARAMA REDDI (1907).
I. L. R. 30 Mad. 510

POSSESSION.

See ADVERSE POSSESSION.

See DISPOSSESSION.

See LANDLORD AND TENANT.

—— suit for—

See REMAND. . **I. L. R. 34 Calc. 996**

1.—*Landlord's suit.*—A suit for recovery of possession by a lessor is maintainable, if the lessee is a party and does not object. RAJ KISHORE AWASTI *v.* JADU NATH BASAK (1905) . **11 C. W. N. 828**

2.—*Suit for possession based on possessory title of plaintiff's predecessor—Plaintiffs never themselves in possession—Cause of action.*—Musammat Wazir Jan, the owner of certain zamindari property, died on the 18th of December 1889, leaving no direct heirs. After her death the property was taken possession of by the four nephews of Musammat Wazir Jan's deceased husband. One of these nephews, Bisharat, died on the 7th of August 1890, whereupon the share of which he had been in possession was appropriated by his son Kasim to the exclusion of Kasim's two sisters, Ayesha Begam and Kudrat Begam. While in Kasim's possession the

POSSESSION—*concluded.*

property, or part of it, was sold in execution of a decree against Kasim and purchased by Shi Gopal and others. On the 7th of August 1902, Kasim's sisters sued to recover their shares of the property as heirs of Bisharat. *Held* by KNOX, *J.* (AIKMAN, *J. dissentiente*), that inasmuch as the plaintiffs had never at any time been in possession of the property claimed by them, their suit would not lie. *Asher* v. *Whitlock, L. R. 1 Q. B. 1*; *Govind Prasad* v. *Mohan Lal, I. L. R. 24 All. 157*; *Narayana Row* v. *Dharmachar, I. L. R. 26 Mad. 514*; *Pahlwan Singh* v. *Ram Bharose, I. L. R. 27 All. 169*; *Sundar* v. *Parbati, I. L. R. 12 All. 51*, and *Ismail Ariff* v. *Mahomed Ghous, I. L. R. 20 Calc. 834*, distinguished. *Hodson* v. *Walker, L. R. 7 Exch. 55*, and *Butcher* v. *Butcher, 7 B. & C. 399*, referred to. AIKMAN, *J.* (*Contra*): The plaintiffs father Bisharat having held a possessory title—heritable and transferable good as against all except the true owner, there was nothing to prevent his heirs bringing the present suit. *Wali Ahmad Khan* v. *Ajudhia Kundu, I. L. R. 13 All. 537*; *Govind Prasad* v. *Mohan Lal, I. L. R. 24 All. 157*; *Asher* v. *Whitlock, L. R. 1 Q. B. 1 Doed*; *Pritchard* v. *Jouncey, 8 C. & P. 99*; *Pahlwan Singh* v. *Ram Bharose, I. L. R. 27 All. 169*; *Babu Ram* v. *Banke Bihari Lal, Weekly Notes 1906, 184*; *Narayana Row* v. *Dharmachar, I. L. R. 26 Mad. 514*; and *Sundar* v. *Parbati, I. L. R. 12 All. 51*, referred to. SHI GOPAL *v.* AYESHA BEGAM (1906) . . . **I. L. R. 29 All. 52**

POSSESSORY SUIT.

See MAMLATDARS' COURTS ACT.
I. L. R. 31 Bom. 86

POSTHUMOUS SON.

See HINDU LAW—WILL.
I. L. R. 30 Mad. 369

POWER.

—Will—Appointment by general bequest—Power created subsequently to the will—Indian Succession Act (X of 1865), s. 78—Civil Procedure Code (Act XIV of 1882), s. 527, case stated under. A general power of appointment may be well exercised by a will executed previously to the creation of the power and that too by a mere residuary gift. DINSHAW SORABJI *v.* DINSHAW SORABJI (1907).
I. L. R. 31 Bom. 472

PRACTICE.

See APPELLATE COURT.
11 C. W. N. 732

See CIVIL PROCEDURE CODE.
I. L. R. 31 Bom. 516

See FALSE CHARGE.
I. L. R. 29 All. 587

PRACTICE—*continued.*

See GUARDIANS AND WARDS ACT.
I. L. R. 31 Bom. 390

See LETTERS OF ADMINISTRATION.
I. L. R. 34 Calc. 706

See LIMITATION, PLEA OF.
I. L. R. 34 Calc. 941

See MINORS. . **I. L. R. 34 Calc. 83**

See PRIVY COUNCIL, PRACTICE OF.

See RECEIVER . **I. L. R. 34 Calc. 336**

See RESTITUTION OF CONJUGAL RIGHTS.
I. L. R. 34 Calc. 352

See SANCTION FOR PROSECUTION.
I. L. R. 34 Calc. 848

See SPECIFIC PERFORMANCE.
11 C. W. N. 946

1.—*Suit for damages for injuries on railway—Appeal decided not on evidence at trial but on observations of Judges at presentation of scene and events of accident on another night than that on which accident occurred.*—The plaintiff sued the defendants, a Railway Company, for damages for injuries sustained by him when alighting from a carriage which overshot the platform of a station at night, and the evidence on the question of what light there was either natural or artificial, on the night in question being conflicting, it was suggested during the hearing of the case on appeal and agreed to by the counsel for the parties that the Judges should visit the scene of the accident under conditions approximating as nearly as possible to those which prevailed when the plaintiff met with his injuries. This was done, the Judges and the legal advisers of the parties went to the station where a presentation of the scene and events of the accident was gone through by which the Judges were enabled to make a thorough investigation of the material conditions accompanying the accident. They formed their own opinion on the question of the sufficiency or otherwise of the light and gave judgment in accordance with them, reversing the decision of the Court which tried the case. *Held*, that such procedure was illegal. The result of it was that the appeal was decided not on the testimony given at the trial as to what took place on the night of the accident, but by the Judges' observation of what they saw on another night altogether; and the decision based on it was set aside, the judgment of the first Court being restored. KESSOWJI ISSUR *v.* GREAT INDIAN PENINSULA RAILWAY COMPANY (1907).
I. L. R. 31 Bom. 381; L. R. 34 I. A. 115

2.—*Arbitration—Written statement—Application for extension of time—Stay of proceedings—Step in proceedings—Arbitration Act (IX of 1899), ss. 4, 19.*—The Calcutta Corporation applied for further time to file their written statement and obtained a fortnight's time. Subsequently they applied to the Court for a reference to arbitration and stay of proceedings. The plaintiffs objected on the ground that an application for further time

PRACTICE—*continued.*

amounted to a step in the action within s. 19 of the Indian Arbitration Act: *Held*, that such an application was a step in the proceedings within s. 19 of the Arbitration Act and that the application for reference to arbitration could not be maintained. *Ford's Hotel Company, Limited*, v. *Bartlett*, [*1896*] *A. C. 1*, followed. SARAT KUMAR ROY *v.* CORPORATION OF CALCUTTA (1907). **I. L. R. 34 Calc. 443**

3.—*High Court Rules, Chapter VIII—Summons for directions—Claim of indemnity—Embarrassing pleading—Refusal to give directions, effect of.*—In deciding whether the Court should give directions on a summons for directions, the Court has to see that nothing is done which would put the plaintiffs to additional expense or difficulty, and also to see that they are not embarrassed by the introduction of third parties in their suit. In giving leave to serve notice of claim for contribution or indemnity on a third party, the Court will not consider whether the claim is a valid one but only whether the claim is *bonâ fide* and whether, if established, it will result in contribution or indemnity. *Carshore* v. *North-Eastern Railway Company, 29 Ch. D. 344*, followed. The effect of a refusal by the Judge to give directions is to dismiss the third party from the action. *Baxter* v. *France*, [*1895*] *1 Q. B. 591*, referred to. SHIVLAL *v.* SHRIKISSONDAS AND MITCHELL (1907) . . **I. L. R. 31 Bom. 465**

4.—*Execution of decrees—Transfer of decree from one district to another—Rules of execution different in the two districts—Procedure.*—Where in different districts different modes of execution are prescribed, and where the question is how a decree passed in one, but of which the execution is sought in another of such districts, is to be executed, the executing Court must be guided by the rules in force in its own district. MARTAND *v.* VINAYAK (1906). **I. L. R. 31 Bom. 5**

5.—*Suit for ejectment—Recording evidence in English—Irregularity—Civil Procedure Code (Act XIV of 1882), s. 578.*—In a suit for ejectment, the recording of evidence in English—which not being the language of the Court—is merely an irregularity, which may be cured by the application of s. 578 of the Code of Civil Procedure. RATAN LAL GIR *v.* FARSHI BIBI (1907). **I. L. R. 34 Calc. 396**

6.—*Recovery of Rent Act (X of 1859), s. 153—Final order of Collector—Appellate order—High Court's power to interfere in revision—Civil Procedure Code (Act XIV of 1882), s. 622—Charter Act, s. 15—Analogous appeals in superior and inferior Courts—Duty of inferior Court to await decision of superior Court.*—S. 153 of Act X of 1859 does not preclude revision by the High Court of an order of a Collector which is final within the meaning of that section. The High Court has power either under s. 622, Civil Procedure Code, or if not, under s. 15 of the Charter Act, to interfere in cases where the lower Courts have not acted correctly in accordance with law. Where a plaintiff failed to secure the production of an important document from the records of another Court though he took all reasonable steps for that purpose and the suit was disposed of by both the Court of first instance and the Appellate Court without reference to that document, the High Court in revision set aside the judgments of both the Courts. When appeals preferred in analogous cases are pending, some in an inferior and others in a superior Appellate Court, the inferior Court of Appeal would exercise a wise discretion to await the decision of the superior Appellate Court. GOBIND RAMANUJA DAS *v.* LAKHUN PARIDA (1906). . **11 C. W. N. 112**

PRACTICE—*concluded.*

7.—*Counsel—Omission to argue question of law or abandoning a point—Power of Court to go into question.*—Omission by a counsel either to argue a question of law, or his abandoning a question of law is not sufficient to disentitle Court to go into the question. *Beni Pershad Koeri* v. *Dudh Nath Roy, I. L. R. 27 Calc. 151*, followed. RAMSARAN SINGH *v.* KHAKHAN SING (1906). **11 C. W. N. 340**

8.—*Court invested with Small Cause Court powers—Decision—Reasons—Provincial Small Cause Courts Act (IX of 1887), ss. 17 and 32.*—The judgment of a Court invested with Small Cause Court powers need not contain more than the points for determination and the decision thereupon; the practice and procedure of such Courts being determined in the matter of judgments by paragraph (1) of s. 203 of the Civil Procedure Code (Act XIV of 1882). *Ramchandra* v. *Ganesh, I. L. R. 23 Bom. 382*, dissented from. NARAYAN *v.* BHAGU (1907). **I. L. R. 31 Bom. 314**

PRE-EMPTION.

See MORTGAGE.

——rig of—

MALABAR LAW.

I. L. R. 30 Mad. 388

1.—*Sale of property to a stranger—Re-sale to a co-sharer before a suit for pre-emption is brought.*—Where property in respect of which a right of pre-emption exists in favour of a co-sharer is sold to a stranger, but before a suit for pre-emption is brought passes back into the hands of co-sharer, a suit for pre-emption cannot be maintained, and this rule is not affected by the fact that the co-sharer in whom the property sold to a stranger revests was a party to its sale to a stranger. *Bhagwan Das* v. *Mohan Lal, I. L. R. 25 All. 421*, referred to. LIAKAT HUSAIN *v.* RASHID-UD-DIN (1906). **I. L. R. 29 All. 125**

2.—*Price stated in sale-deed alleged to be fictitious—Burden of proof.*—When a plaintiff pre-emptor comes into Court alleging that the price entered in the sale-deed is fictitious, it rests on him to give some *primâ facie* evidence that this is the

PRE-EMPTION—*concluded.*

case. But comparatively slight evidence is sufficient for such purpose, and it will then be for the parties to the sale to show that the price alleged to have been paid was actually paid. *Bhagwan Singh* v. *Mahabir Singh, I. L. R. 5 All. 184, Sheo Pargash Dube* v. *Dhanraj Dube, I. L. R. 9 All. 225,* and *Agar Singh* v. *Raghuraj Singh, I. L. R. 29 All. 471,* referred to. *O'Conor* v. *Ghulam Haidar I. L. R. 28 All. 617,* not followed. ABDUL MAJID *v.* AMOLAK (1907) . . **I. L. R. 29 All. 618**

3.—*Wajib-ul-arz—Custom—Effect of perfect partition, no new wajib-ul-arzes for the new mahals being framed.*—Where a village, in which, according to the wajib-ul-arz, a custom of pre-emption existed amongst the co-sharers, was divided by perfect partition into three mahals, but no fresh wajib-ul-arzes were framed for the new mahals, it was *held* that the custom was either abrogated in its entirety, or remained applicable in its entirety to the co-sharers in the various new mahals *inter se. Badri Prasad* v. *Hashmat Ali, I. L. R. 29 All. 299,* discussed. *Dalganjan Singh* v. *Kalka Singh, I L. R. 22 All. 1,* referred to. GOBIND RAM *v.* MASHULLAH KHAN (1907) . **I. L. R. 29 All. 295**

PRESCRIPTION.

See ADVERSE POSSESSION.
I. L. R. 30 Mad. 145

See EASEMENT.

PRESIDENCY BANKS ACT (XI OF 1876).

——s. 50—

—Bank of Bombay—Right of a shareholder to inspect the register of shareholders of the Bank—Object of such inspection—Common law right of a member of a corporation to inspect books of the corporation.—Every member of a corporation has a right under common law to inspect its books and records and such right does not cease merely because a corporation is created by a statute which does not confer the right, unless the statute expressly excludes it. The member of a corporation as such is entitled to the inspection of any of its documents if he satisfies the Court that he is seeking inspection not from mere idle curiosity or for some speculative purpose, but that he has some reasonable and definite object, in which he is interested, and for which the inspection is required, whether that definite object concerns or not any subject then in controversy or discussion. *Rex* v. *The Fraternity of Hostmen, 2 Stra. 1221,* and *Rex* v. *The Merchant Tailors' Company, 2 B.* and *Ad. 115,* followed. It is but reasonable that a shareholder of a Bank should desire from time to time to consult other shareholders and discuss with them the affairs of the Bank for the purpose of taking concerted action, where and when necessary, apart from any question of any irregularity existing in the management of the Bank. And for that purpose inspection of the register of shareholders is necessary, to enable him to find out who the shareholders are whom it would be worth his while to consult and whose co-operation he should seek. Other books and records of the Bank may stand on a different footing: when inspection of any of them is claimed other and stricter consideration might apply. *Held,* further, that the plaintiff's proper remedy was by way of suit and not *mandamus* under the Specific Relief Act. SULLEMAN SOMJI *v.* THE BANK OF BOMBAY (1907). **I. L. R. 31 Bom. 319**

PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882).

——s. 9—

—Civil Procedure Code (Act XIV of 1882), s. 622—Regulation XXVII of 1827, s. 5—Decree of Presidency Small Cause Court—High Court's power of superintendence and revision—Grave and irreparable injustice—Receiver—Rent—Use and occupation.—The plaintiff owned a certain house at Bombay. He let it out to a tenant on a monthly tenure. The tenant used the premises for his press, machinery and stock which he had mortgaged to his creditor, before he entered into a contract by way of lease with the plaintiff. Subsequently the mortgagee brought a suit in the High Court upon his mortgage and under the Court's order, the Official Receiver took possession of the machinery and stock on the plaintiff's premises. Before the suit in the High Court the plaintiff had given to the tenant a notice to quit. Later on he gave another notice to the Receiver that he was going to charge him rent from a particular date. On failure of the Receiver to pay rent, the plaintiff, with the permission of the High Court, brought a suit against him in the Court of Small Causes, Bombay, for the recovery of the rent, or, in the alternative, for compensation for use and occupation. The suit was dismissed by the Court on the ground that there was no relationship of landlord and tenant between the plaintiff and defendant, who, as Receiver, was merely a custodian appointed by the Court and that his appointment did not affect the rights of the contracting parties. Against the said decision the plaintiff applied to the High Court under the extraordinary jurisdiction and obtained a *rule nisi* requiring the defendant to show cause why the decision should not be reversed. *Held,* discharging the rule, that the plaintiff could not succeed in the suit. *Per* BEAMAN, *J.*:—Courts in the exercise of superintending powers will not ordinarily interfere except in cases of grave and otherwise irreparable injustice. ISMALJI *v.* N. C. MACLEOD (1906).
I. L. R. 31 Bom. 138

——ss. 9, 19, 28—

See TITLE . . **I. L. R. 34 Calc. 823**

——Chap. VII—

—Civil Procedure Code (Act XIV of 1882), s. 108—Presidency Small Cause Court—Proceedings in ejectment—Ex parte order—Power to set aside.—The Small Cause Court has an inherent power to

PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882)—*concluded.*

deal with an application to set aside an order made *ex parte* and to set it aside upon a proper cause being substantiated. *Per* JENKINS, *C. J.*:—It is erroneous to suppose that s. 108 of the Code of Civil Procedure has no application to proceedings under Chapter VII of the Presidency Small Cause Courts' Act. It is quite true that it has not a direct application, because proceedings under Chapter VII are not a suit, nor is an adjudication in the proceedings a decree. TYEB BEG MAHOMED *v.* ALLIBHAI (1906) . . . . I. L. R. 31 Bom. 45

——s. 38, Chap. VII—

—*Proceedings in ejectment—Order—Decree.*—The plaintiff instituted proceedings in ejectment against the defendant under Chapter VII of the Presidency Small Cause Courts' Act (XV of 1882; the Judge passed an order directing the defendant to vacate. The defendant applied under s. 38 of the above Act to the Full Court which declined to entertain the application. The defendant thereupon applied to the High Court under its extraordinary jurisdiction (s. 622 of the Civil Procedure Code, Act XIV of 1882) and obtained a *rule nisi* requiring the plaintiff to show cause why the order should not be set aside. *Held,* discharging the rule, that an application under Chapter VII of the Presidency Small Cause Courts Act (XV of 1882) does not come within the operation of s. 38 of the Act. A proceeding under Chapter VII results not in a decree but in an order. Therefore, the condition under which the Presidency Small Cause Court can interfere under s. 38 does not arise in a proceeding under Chapter VII of the Act. RAMKRISHNA *v.* HAJI DAWOOD (1907) . . . I. L. R. 31 Bom. 259

PRESUMPTION.

See EVIDENCE ACT (I OF 1872), S. 114.
I. L. R. 29 All. 138

See WILL. . . I. L. R. 29 All. 82

PREVIOUS CONVICTION.

See CRIMINAL PROCEDURE CODE, SS. 1307, 310. . . I. L. R. 30 Mad. 134

PRINCIPAL AND AGENT.

See GUARDIAN AND WARD.
I. L. R. 34 Calc. 892

1.—*Agent appointed by administrator not liable on the contract of agency to the person entitled to the estate.*—An agent appointed by the administrator of an estate as such, cannot be proceeded against on such contract of agency by the person entitled to the estate, and it makes no difference that the administrator obtained the grant as the attorney of the mother and guardian of the person entitled. CHIDAMBARAM CHETTI *v.* PICHAPPA CHETTI (1907).
I. L. R. 30 Mad. 243

PRINCIPAL AND AGENT—*concluded.*

2.—*Contract Act (IX of 1872), ss. 198, 211, 216—Ratification—Suit for adjustment of accounts.*—The defendants as agents for the plaintiff entered into certain contracts for the sale of grain for future delivery. The defendant discharged these contracts by means of goods of their own and when subsequently the plaintiff sent on grain to the defendants to meet these contracts, the defendants sold the plaintiff's grain at a profit. The defendants did not inform the plaintiff either that they had fulfilled the contracts with their own grain or that they had resold the plaintiff's grain at a profit. *Held,* that the plaintiff was entitled to whatever profit was realized by the defendants on this latter transaction. *Held,* also, that where on a direction by the principal to his agents to purchase grain for him, the agent sold to him their own grain at a price higher than the prevailing market rate, the principal was entitled to repudiate the transaction and could not be alleged to have ratified it in the absence of knowledge that the agents were selling their own property and were charging him in excess of the market rate. DAMODAR DAS *v.* SHEORAM DAS (1907).
I. L. R. 29 All. 730

3.—*Contract—Contract with broker acting as principal—Specific performance—Contract Act (IX of 1872), s. 236.*—Where the plaintiffs purported to act under contract with the defendant as brokers for the sale and purchase of jute, but really acted on their own account as principals without the knowledge and consent of the defendant:—*Held,* that they were not entitled to recover for the latter's breach of contract by reason of s. 236 of the Indian Contract Act. S. 236 is not restricted to cases where an agent purports to act for a named principal, but follows the rule underlying the cases of *Rothschild* v. *Brookman, 2 Dow & Cl. 188,* and *Robinson* v. *Mollett, L. R. 7 E. & I. App. 802,* that an agent cannot recover on a contract if he really acts as a principal. SEWDUTT ROY MASKARA *v.* NAHAPIET (1907) . . . . I. L. R. 34 Calc. 628

PRINCIPAL AND SURETY.

See ACTIONABLE CLAIM.
I. L. R. 30 Mad. 235

See SURETY.

—*Liability of surety—Liable for full amount decreed in the absence of any equity.*—Where principal and surety are jointly sued and a decree is passed against both for a certain amount and against the principal for the full amount, including the amount jointly decreed, the contract of suretyship is merged in the decree and the surety, when the whole amount has not been recovered from the principal, remains liable for the balance to the extent of the amount decreed against him unless he can show some equity in his favour which entitles him to say that he is not liable for the full amount decreed against him. No such equity arises, because the amount recoverable by attachment and sale from the principal was reduced by rateable distribution among other creditors of the principal by an order under

PRINCIPAL AND SURETY—*concluded.*

s. 295 of the Code of Civil Procedure; nor can the surety claim that a proportionate share of the amount realised from the principal must go to reduce his own liability. APPASAMI AYYANGAR *v.* RAMANATHAM CHETTIAR (1906) . . **I. L. R. 30 Mad. 167**

PRINTING PRESS.

——confiscation of—

—Sedition—Instrument for commission of offence.—A printing press cannot be said to have been used for the commission of sedition inasmuch as the offence consists in the publication and not the printing, the press being only a remote instrument. ABINASH CHANDRA BHATTACHARJEE *v.* EMPEROR (1907).
I. L. R. 34 Calc. 986

PRIOR AND PUISNE MORTGAGEES, RIGHTS OF.

See MORTGAGE. . **11 C. W. N. 403**

PRIOR MORTGAGE.

See MORTGAGE.
I. L. R. 31 Bom. 112

PRIORITY.

See MORTGAGE.

——between landlord and mortgagee.

See SALE FOR ARREARS OF RENT.
I. L. R. 34 Calc. 724

PRIVACY, RIGHT OF.

See EASEMENT. . **I. L R. 29 All. 582**

—Easement—Easements Act (V of 1882), s. 4—Suit by occupier of house.—Not only the owner, but the lessee or other person in lawful possession of premises may maintain an action if his right of privacy is interfered with. *Gokal Prasad* v. *Radho*, *I. L. R. 10 All. 358*, referred to. KUNDAN *v.* BIDHI CHAND (1906) . . . **I. L. R 29 All. 64**

PRIVATE AWARD.

See APPEAL. . . **11 C. W. N. 220**

PRIVATE DEFENCE, RIGHT OF.

—Penal Code, s. 99—Illegal warrant—Obstruction to execution—Criminal Procedure Code (Act V of 1898), ss. 96 and 100—Warrants wrongly issued under s. 96 instead of under s. 100.—Where on the complaint of one G that his wife was wrongfully confined by his father-in-law, a warrant was issued under s. 96, Criminal Procedure Code, and the Police attempting to execute this warrant at the house of the father-in-law was obstructed by him and seven others who also used criminal force. *Held*, that the accused were justified in doing what they did in the exercise of the right of private defence. That as the warrant issued was wholly illegal and must be treated as nullity, the accused were not deprived of the right of private defence under s. 99, Indian Penal Code. "Not strictly justifiable by law" in s. 99, Indian Penal Code, explained. BISU HALDAR *v.* EMPEROR (1907).
11 C. W. N. 836

PRIVY COUNCIL, PRACTICE OF.

—Waiver—New point—Question not allowed to be raised on appeal—Question of fact decided by first Court against appellant, and not raised in High Court.—Held, that a question of whether there had been or not a waiver of an irregularity in the conduct of a sale, which question had been decided by the first Court adversely to the appellants, and had not been submitted to the High Court for review could not be entertained on appeal to the Privy Council, being a question of fact which had not been subject to the consideration of the Court from whose decision the appeal was brought. DHANUKDHARI SINGH *v.* MAHABIR PERSHAD SINGH (1907).
I. L. R. 34 Calc. 709; L. R. 34 I. A. 164

PROBATE.

See WILL.

—Executor according to the tenor—Probate to executor according to the tenor granted only where discharge of such duties as executors have to perform are included.—Where property is left by a will to trustees, they will not be entitled to probate as executors according to the tenor, unless it appears from the will that they have to discharge such duties as executors have to perform. APPACOOTY MUDALI *v.* MUTHU KUMARAPPA MUDALI (1906).
I. L. R. 30 Mad. 191

PROBATE AND ADMINISTRATION ACT (V OF 1881).

——s. 33—

—Grant for the use and benefit of minor—Minor wife—Husband, grant to—Guardian—Practice.—Where a husband applied under s. 33 for the Probate and Administration Act for letters of administration for the use and benefit for his minor wife:—*Held*, that such application was not maintainable until the applicant had been appointed guardian of his minor wife. NIROJINI DEBI, *In the goods of* (1907).
I. L. R. 34 Calc. 706

PROCEDURE.

See BENGAL REGULATION XVII OF 1806, s. 8. . . **I. L. R. 29 All. 145**

PROCESSIONS.

—Public worship of idol—Claim to exclusive right to have procession in public streets—Dispute between rival sects of Vaishnava Brahmins—Streets vested in Local Boards under Madras Local Boards Act (Madras Act V of 1884)—Res judicata—Ownership of land in village—Presumptive dedication to idol.—The plaintiffs, members of the community of the Vadagalai sect of Vaishnava Brahmins, claimed the exclusive right to public worship of their idol and processions in its honour in the public streets of the village where they resided, and to prohibit the defendants, members of the Tengalai sect in the same village, from publicly worshipping the Tengalai idol or carrying it in processions in the public streets. The claim was based on the grounds (1) that the Vadagalais were the original owners of all the land of the village and only allowed houses to be built and streets formed subject to the reservation that no worship or procession of a Tengalai idol should be allowed in them, thus dedicating them to their own idol; (2) that, in the alternative, they had by immemorial usage and custom the right to prevent such worship or processions in the streets; and (3) that so far as the Tengalai idol was concerned the rights of the parties were *res judicata* by the decision in a former suit:—*Held*, that the ownership of the village by the Vadagalais was not proved nor any dedication of the streets exclusively to their idol; and that no such custom as alleged had been established; the village was an ordinary ryotwari village; the streets were public streets now vested, under the Madras Local Boards Act (Madras Act V of 1884), in the Local Board. All members of the public had an equal right in them. If the Vadagalais had any objection to the streets being so vested, they had had the opportunity when the Act was passed of raising the objection by appeal to the Governor-General in accordance with the provisions of the Act. Not having done so it was now too late to set up any claim,—*Held*, also, that the former suit was not a representative suit binding property, nor a suit framed for the purpose of binding the Tengalai sect for all time. It was a suit against certain persons alleged to be wrong-doers in their individual capacity: the decision in it was, therefore not *res judicata* in the present suit. SADAGOPA CHARIAR *v.* KRISHNAMOORTHY RAO (1907). **I. L. R. 30 Mad. 185; L. R. 34 I. A. 93**

PROHIBITORY ORDER WITHOUT EXPRESS LIMITATION OF TIME.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898) S. 144. **I. L. R. 34 Calc. 897**

PROJECTION.

See ENCROACHMENT.
I. L. R. 34 Calc. 844

PROMISSORY NOTE.

See JOINT FAMILY, LIABILITY OF.
11 C. W. N. 139

PROPERTY, DISPOSAL OF.

See CONFISCATION.
I. L. R. 34 Calc. 986

PROSECUTION.

See JURISDICTION OF CRIMINAL COURT.
11 C. W. N. 832

See SANCTION FOR PROSECUTION.

——order for—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 476
I. L. R. 34 Calc. 551

——of witness—

See DEFAMATION.
I. L. R. 29 All. 685

—Prosecution—Limitation—Calcutta Municipal Act (Bengal III of 1899), ss. 408, 419, 574 and 631—Bustee improvement—Notice—Date of offence—Subsequent notice under s. 419—Extension of time by Corporation.—Where a notice under s. 408 of the Calcutta Municipal Act was served on the owner of a *bustee* on the 3rd March 1906, directing certain improvements within three months from its date, but the owner failed to comply with it and served a notice under s. 419 of the Act on the 2nd July, whereupon the Corporation gave her further time till the 2nd January 1907, and instituted a complaint on the 23rd January for non-compliance with the terms of the notice of the 3rd March 1906:—*Held*, that the three months having expired on the 2nd June 1906, the offence was committed on the next day, and the prosecution was therefore barred under s. 631; and that the notice under s. 419 and the extension of time by the Corporation, both being after the date of the offence, were ineffectual in extending the period of limitation. KUMUD KUMARI DASSI *v.* CORPORATION OF CALCUTTA (1907) . **I. L. R. 34 Calc. 909**

PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887).

——ss. 17, 32—

—Civil Procedure Code (Act XIV of 1882), s. 203, paras. (1) and (2)—Court invested with Small Cause Court powers—Decision—Reasons.—The judgment of a Court invested with Small Cause Court powers need not contain more than the points for determination and the decision thereupon; the practice and procedure of such Courts being determined in the matter of judgments by paragraph (1) of s. 203 of the Civil Procedure Code (Act XIV of 1882). *Ramchandra v. Ganesh, I. L. R. 23 Bom. 383*, dissented from. NARAYAN *v.* BHAGU (1907) . . **I. L. R. 31 Bom. 314**

PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887)—*concluded.*

——s. 35—

—*Application under, to be made in Court having jurisdiction at time of application.*—Where a Court of Small Causes is abolished after having passed a decree, the Court in which, under s. 35 of Act IX of 1887, proceedings are to be taken in respect of such decree, is the Court in which the suit is instituted at the time of such application would have to be instituted. Where the jurisdiction in such a case is to be determined by considering the place of residence of the defendant, his residence at the time of the application is to be considered as his place of residence. KURELLA CHENCHAYYA *v.* POLISETTI SITARAMASWAMY (1906).

I. L. R. 30 Mad. 217

——Sch. II, Art. 41—

See CONTRIBUTION, SUIT FOR.

I. L. R. 30 Mad. 212

PUBLIC DEMANDS RECOVERY ACT (BENG. I OF 1895).

——ss. 8, 10—

—*Notice—Limitation Act (XV of 1877), Sch. II, Arts. 12, 142—Sale in execution of certificates—Suit to set aside sale—Possession—Certificate, effect of.*—When notice has not been served under s. 10 of the Public Demands Recovery Act, 1895, and a suit is brought to set aside the sale and to recover possession of the property sold, Art. 142, and not Art. 12 of Sch. II of the Limitation Act is applicable. Under s. 8 of the Public Demands Recovery Act, a certificate duly made and filed has, in so far as regards the remedies for enforcing it, the force and effect of a decree of a Civil Court notwithstanding that notice may not have been served under s. 10; but a sale held without service of notice under s. 10 is wholly without authority, and is a nullity. PURNA CHANDRA CHATTERJEE *v.* DINABUNDHU MUKERJEE (1907) . . **I. L. R. 34 Calc. 811**

——ss. 10, 31—

—*Notice—Non-service of notice, effect of—"Adult"—Sale—Suit to set aside sale—Procedure—Limitation—Civil Procedure Code (Act XIV of 1882), ss. 244, 312—Limitation Act (XV of 1877), Sch. II, Art. 12 (b).*—Where it is alleged that notice has not been served under s. 10 of the Public Demands Recovery Act, the onus is on the party alleging want of notice. *Rakhal Chandra Rai Chowdhuri* v. *Secretary of State, I. L. R. 12 Calc. 603,* referred to. It is not sufficient that such notice should be actually served; it must be served in accordance with the provisions of s. 31 of the Act. "Adult" in that section does not mean a person who has attained majority within the meaning of the Majority Act, but a person of such an age as to be capable and responsible for the due communication of the notice to the member of the family for whom it is intended. A duly made certificate has on its filing the force and effect of a decree. Until, however, service of notice under s. 10, which has the effect of an attachment, no particular property is bound by the decree. A sale without prior attachment is irregular, but not a nullity. *Kishory Mohun Roy* v. *Mahomed Mujaffar Hossein, I. L. R. 18 Calc. 188,* referred to. The due making and filing of the certificate gives it the effect of a decree, and therefore non-service of notice under s. 10 does not affect the validity of the certificate itself. A suit to set aside a sale on the sole ground that the decree under which it was held was an invalid decree simply because of absence of notice under s. 10, fails because such absence of notice does not affect the validity of the decree. *Baijnath Sahai* v. *Ramgut Singh, I. L. R. 23 Calc. 775,* followed. *Saroda Charun Bandopadhya* v. *Kista Mohun Bhattacharjee, 1 C. W. N. 516; Chunder Kumar Mukerjee* v. *The Secretary of State, I. L. R. 27 Calc. 698; Gopal Das* v. *Hardeo Das, 5 C. W. N. 86; Ambica Prosad* v. *Gopal Buksh Das, 1 C. L. J. 550; Ramrup Sahay* v. *Khushal Misser, 6 C. W. N. 630; Srinath Hore* v. *Bishan Chandra Das, 2 C. L. J. 504; Umed Ali Bhuyan* v. *Raj Lakshmi Debya, I. L. R. 33 Calc. 84; Ramrup Sahai* v. *Kushal Misser, 3 C. L. J. 280; Sham Lal Mandal* v. *Nilmani Das, 5 C. L. J. 385, 387,* not followed. The Certificate Officer has jurisdiction to transfer the execution of the decree. The Collector of the 24-Parganas is *ex-officio* Collector of Calcutta. The Collector of the 24-Parganas may, in his capacity of Certificate Officer, sell immoveable property in Calcutta. Ss. 244 and 312 of the Civil Procedure Code apply to execution proceedings under the Public Demands Recovery Act. Art. 12 (*b*), Sch II of the Limitation Act bars the suit. HARI CHARAN SINGH *v.* CHANDRA KUMAR DEY (1907).

I. L. R. 34 Calc. 787

PUBLIC DOCUMENT.

See EVIDENCE. . **I. L. R. 34 Calc. 293**

PUBLIC NUISANCE.

—*Indian Penal Code (Act XLV of 1860), ss. 268 and 290.*—In order to constitute an offence under s. 268 of the Penal Code it is not necessary that the alleged nuisance should produce smells injurious to health, it is sufficient if they be offensive to the senses. *Rex* v. *Neil, 2 C. & P. 485,* approved of. To allow a large stack of bones to remain uncovered in the open for a long time so as to become rotten and to emit a smell noxious to people living in or passing by the vicinity is not an act which a bone-mill manager is entitled to do in carrying on his trade in a reasonable way and by allowing such act to be done he would be guilty of committing a public nuisance. BERCKEFELD *v.* EMPEROR (1906).

I. L. R. 34 Calc. 73

PUBLIC OFFICER.

——suit against—

—Suit against public officer—Suit to recover articles seized by police during a search.—The plaintiff sued to recover from the defendant three account books which he alleged that the defendant, a Sub-Inspector of Police, had seized during a search, apparently in pursuance of the provisions of s. 165 of the Code of Criminal Procedure, of the plantiff's house. *Held*, that the defendant, if he seized the books, which was denied, did so in his capacity as a police officer, and that the suit was not maintainable in the absence of the notice prescribed by s. 424 of the Code of Civil Procedure. *Muhammad Saddiq Ahmad* v. *Panna Lal*, *I. L. R. 26 All. 220*, distinguished. *Jogendra Nath Roy Bahadur* v. *Price*, *I. L. R. 24 Calc. 584*, referred to. BAKHTAWAR MAL *v.* ABDUL LATIF (1907).

I. L. R. 29 All. 567

PUBLIC SERVANT.

See PUBLIC OFFICER.

PUBLIC TRUST.

See CIVIL PROCEDURE CODE, s. 539.

I. L. R. 29 All. 27

PUBLIC-WORKS IRRIGATION DEPARTMENT.

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 54 . **I. L. R. 34 Calc. 207**

PUISNE MORTGAGEE.

—Prior mortgage—Suit by prior mortgagee for sale—Puisne mortgagee not made a party—Sale in execution—Rights of the puisne mortgagee.—Where a prior mortgagee sues his mortgagor for the sale of the mortgaged property without making the puisne mortgagee a party to the suit, the latter is in no way affected by the suit or its results. Thus if the property is brought to sale in execution of the decree and is bought by a third person, the puisne mortgagee has, as against him, precisely the same rights as he had collectively against his mortgagor and the prior mortgagee. That is to say, he may sue to redeem the purchaser as mortgagee or thereafter as mortgagor to foreclose or suffer himself to be redeemed by him. PANDURANG *v.* SAKHARCHAND (1906) . . . . **I. L. R. 31 Bom. 112**

PUNCHAYET.

See CONFESSION. . **1 C. W. N. 904**

PURCHASE OF ANCESTRAL PROPERTY.

See MAHOMEDAN LAW.

PURCHASERS.

——at sale for arrears of revenue—

See RES JUDICATA.

I. L. R. 34 Calc. 868

——ignorant and unwary—

See TRADE-MARK. **I. L. R. 34 Calc. 495**

——title of—

See LIMITATION. **I. L. R. 34 Calc. 711**

See SALE IN EXECUTION OF DECREE.

—Contract Act (IX of 1872), s. 69—Money paid by purchaser towards an incumbrance subject to which he buys, not recoverable under.—Where a purchaser of property at a Court sale purchases it, subject to a charge for maintenance, such purchaser cannot, under s. 69 of the Contract Act, recover from the owner in whose hands it was so liable, payments made by him (the purchaser) towards maintenance to prevent the sale of the property. MANGALATHAMMAL *v.* NARAYANSWAMI AIYAR (1907).

I. L. R. 30 Mad. 461

PUTNIDAR, RIGHT OF, OF SMALL SHARE TO CLAIM PARTITION.

See PARTITION, SUIT FOR.

I. L. R. 34 Calc. 1026

PUTNI LEASE.

See CHAUKIDARI CHAKRAN LANDS.

I. L. R. 34 Calc. 109, 564

PUTNI SALE.

1.—*Putni Regulation (VIII of 1819)—Notice—Irregularity—Sale setting aside.*—In a suit to set aside a sale held under the Putni Regulation it was found that the notices were stuck up in the Collector's Office Board outside the Court from 10 A.M. to 5 P.M. and were not put up at all on Sundays. *Held*, that this was a sufficient compliance with the terms of the Regulation. *Bejoy Chand Mahatap* v. *Atulya Charan Bose*, *I. L. R. 32 Calc. 953*, explained and distinguished. SACHI NANDAN DUTTA *v.* BEJOY CHAND MAHATAP (1906).

11 C. W. N

2.—*Suit to set aside sale—Jurisdiction—Return of plaint—Appeal.*—A suit to set aside a sale held under the Putni Regulation may be brought in any one of several Courts in whose jurisdiction the property or a part thereof is situated although the sale was held in the Collectorate of a district other than that in which the suit is to be brought. A *putni* was sold in the Burdwan Collectorate and a suit was instituted to set aside the sale in the Court of the Sub-Judge of Hughly in whose jurisdiction a portion of the property was situate. The Court returned the plaint for presentation to the proper Court; the plaintiff took back his plaint and presented it to the Burdwan Court. *Held*, that having regard to the

PUTNI SALE—*concluded.*

action of the plaintiff in presenting the plaint to the Burdwan Court *i.e.*, in accepting and acting under the order of the Hughly Court, it is not open to him to appeal from the order returning the plaint. BENI MADHUB DAS *v.* JOTINDRA MOHUN TAGORE (1907).
11 C. W. N. 765

R

RAILWAY COMPANY.

See CONTRACT.
I. L. R. 29 All. 228

See RAILWAYS ACT.

1.—*Railways Act (IX of 1890), s. 47—Rules under the Act—Criminal offence.*—Neither s. 47 of the Railways Act, nor the rules made by a Railway Company under that section, create any criminal offence. The section merely gives the Company power to frame rules and to enforce them by imposing fines on its own officers. BASANTA KUMAR BANERJEE, *In re* (1907).
11 C. W. N. 583

2.—*Railways Act (IX of 1890), s. 67—Benefit of section not waived by Railway Company when the grant reserved accommodation under the rules.*—The provision in s. 67 of the Indian Railways Act that 'fares shall be deemed to be accepted and tickets deemed to be issued subject to the condition of there being room available in the train for which the tickets are issued' is introduced for the benefit of Railway Companies and can be waived by them. One of the rules under which reserved accommodation is granted is, 'Reserved carriages in mail trains can be provided when the load of the train permits.' In granting reserved accommodation on the terms embodied in the rules, the Company does not contract itself out of the benefit conferred by s. 67, and is not liable in damages for refusing to attach a reserved carriage to a mail train already fully loaded. KOMMIREDDY SURAYANARAYANAMURTY *v.* THE MADRAS RAILWAY COMPANY (1907) . **I. L. R. 30 Mad. 417**

3.—*Contract—Receipt of goods by one company for carriage over its own and another company's line—Liability in respect of overcharge made by delivering company—Bye-laws- Power of Railway Company to alter the principle of calculation of rates.*—Two wagon loads of chillies were received by the Station Master at Bezwada on the Nizam's Guaranteed State Railway for carriage to Agra station on the Great Indian Peninsula Railway at a rate of R270 per wagon for the whole distance. On arrival at Agra the Great Indian Peninsula Railway Company's Station Master demanded payment of higher rates, calculated per maund, and refused delivery until such rates were paid. The consignees paid under protest and sued both Railway Companies for a refund of the excess charges. *Held*, that the contract for carriage of the goods for the whole distance was one entire contract with the receiving company,

RAILWAY COMPANY—*concluded.*

who were liable for the overcharge, if any, wrongfully demanded from the consignees. *Muschamp v. Lancaster and Preston Junction Railway Company, 8 M. & W. 421: 58 R. R. 758; Webber v. The Great Western Railway Company, 3 H. and C. 771,* and *Kalu Ram Maigraj v. The Madras Railway Company, I. L. R. 3 Mad. 240,* followed. *Held,* also, that a bye-law of the Great Indian Peninsula Railway Company which reserved to the Railway the right of remeasurement, reweighment, recalculation and reclassification of rates, terminals and other charges at the place of destination and of collecting before the goods are delivered any amount that may have been omitted or undercharged did not authorize the Great Indian Peninsula Railway Company to alter the contract between the parties and charge at the place of destination maund-rates instead of wagon-rates. CHUNI LAL *v.* THE NIZAM'S GUARANTEED STATE RAILWAY COMPANY, LIMITED (1906
I. L. R. 29 All. 228

RAILWAY, INJURIES ON.

See CIVIL PROCEDURE CODE.
I. L. R. 31 Bom. 381

RAILWAYS ACT (IX OF 1890).

——s. 10—

See COMPENSATION.
I. L. R. 34 Calc. 470

——s. 47—

See RAILWAY COMPANY.
11 C. W. N. 583

——s. 67—

See RAILWAY COMPANY.
I. L. R. 30 Mad. 417

——s. 75—

See CARRIERS, LIABILITY OF.
11 C. W. N. 1076

See CARRIERS.
I. L. R. 34 Calc. 419

——ss. 77, 140—

—Refund of an overcharge—Notice—Letter—Manner of service—Statement of fact not a proof of fact.—Plaintiffs, who were merchants residing at Poona, entered into an agreement with the Great Indian Peninsula Railway Company that the latter should deliver consignments of goods despatched from Wadi at Poona at a certain rate. Several consignments were accordingly delivered by the Railway Company at Poona and they were paid for according to the agreed rate. At the time of the delivery of the last consignment, the Railway Company refused to deliver it unless all the consignments, including those already delivered and paid for, were paid for at a higher rate. The plaintiffs thereupon paid the higher rate under protest and sued the Railway Company in the Court of Small

RAILWAYS ACT (IX OF 1890)—*continued.*

Causes at Poona for the recovery of the overcharges claimed and received by the defendant. The defendant contended that the suit was not maintainable inasmuch as no notice of the claim was served by the plaintiffs according to s. 77 of the Indian Railways Act (IX of 1890). The Judge overruled the defendant's contention and allowed the claim holding that a notice under s. 77 of the Act was not necessary because the section contemplated overcharges recovered before the delivery of the goods to the consignee, and not to overcharges recovered after the delivery as was the present case. He further held that if notice was necessary, it was given by the plaintiff inasmuch as there was an allegation that a notice had been sent in a letter addressed to the Agent of the Company, care of the Station Master, Poona, by the plaintiffs. The defendant having applied under revisional jurisdiction: *Held*, that notice was necessary. The overcharge referred to in the section is not confined in its meaning to an overcharge recovered before the delivery of the goods to the consignee at their destination. *Held*, further, that the delivery of a letter under s. 140 of the Act must be in exact compliance with the terms of the section and it must be delivered to the Agent at his office. The statement of a fact in a letter is no proof of the fact itself. GREAT INDIAN PENINSULA RAILWAY COMPANY *v.* DEWASI (1907).

I. L. R. 31 Bom. 534

——s. 101—

See COLLISION. **11 C. W. N. 173**

——s. 112—

—*Offence—Separate sentence—General Clauses Act (X of 1897), s. 26—Indian Railways Act (IX of 1890), ss. 68, 112—Travelling without ticket—Attempt to cheat—Indian Penal Code (Act XLV of 1860), ss. 417, 511—Dishonest or fraudulent intention.*—The essence of an offence under s. 112 of the Indian Railways Act is dishonest or fraudulent intention, the intention to defraud the Railway Administration of its just dues. Merely travelling without a ticket is not an offence under the section. *Bentham* v. *Hoyle, L. R. 3 Q. B. D. 289; Queen-Empress* v. *Rampal, I. L. R. 20 All. 95*, referred to. Travelling with a false and entirely irrelevant ticket with fraudulent or dishonest intention is an offence under s. 112 (*a*) of the Railways Act. Facts which form the basis of a conviction and sentence under one charge cannot form the basis of a conviction and also a separate sentence under another charge. There cannot be cumulative sentences though a conviction might take place on an alternative charge or even both charges. It is ordinarily desirable that when an act or omission is made penal by two Acts, one general and the other special, the sentence should be passed under the Special Act. *Quære*: Whether in this country a special penal law repeals by implication, in every case, a previously existing general law relating to

RAILWAYS ACT (IX OF 1890)—*concluded.*

an offence of the same nature. KULODA PROSAD MAJUMDAR *v.* EMPEROR (1908).

11 C. W. N. 100

RAJ, CONFISCATION OF.

See CONFISCATION. **11 C. W. N. 655**

RATIFICATION.

See PRINCIPAL AND AGENT.
I. L. R. 29 All. 730

RE-ADMISSION.

See DISMISSAL FOR DEFAULT.
I. L. R. 34 Calc. 403

REASONABLE CAUSE FOR SUSPENSION.

See ADVOCATE.
I. L. R. 29 All. 95; L. R. 34 I. A. 41

RECEIVER.

1.—*Civil Procedure Code (Act XIV of 1882), ss. 503 and 505—Appointment of Receiver by a subordinate Court without sanction of the District Court, validity of—Receiver, whether he can sue in his own name.*—Where a suit was instituted by a Receiver at a time when he had been appointed by a Subordinate Judge to act temporarily, but without the previous sanction of the District Judge, which, however, was subsequently obtained: *Held*, that such a suit was validly instituted by the Receiver. *Benode Behary Mookerjee* v. *Raj Narain Mitter, I. L. R. 30 Calc. 699*, distinguished. *Harakumar Pal Chowdhury* v. *Safatulla, 2 C. L. J. 70*, and *Padmanand Singh* v. *Anant Lal Misser, 4 C. L. J. 421*, referred to. A Court may authorise a Receiver to sue in his own name, and a receiver, who is authorised to sue, though not expressly in his own name, may do so by virtue of his appointment with full powers under s. 503 of the Code of Civil Procedure. *William Robert Fink* v. *Moharaj Bahadur Singh, I. L. R. 25 Calc. 642*, and *The Oriental Bank Corporation* v. *Gobin Loll Seal, I. L. R. 10 Calc. 713*, relied upon. *Shunmugam* v. *Moidin, I. L. R. 8 Mad. 229; Gopalasami* v. *Sankara, I. L. R. 8 Mad. 418; Sundaram* v. *Sankara, I. L. R. 9 Mad. 334; Drobomoyi Gupta* v. *C. T. Davis, I. L. R. 14 Calc. 323; Haridass Kundu* v. *J. C. Macgregor, I. L. R. 18 Calc. 477*; and *W. R. Fink* v. *Buldeo Dass, I. L. R. 26 Calc. 715*, referred to. JAGAT TARINI DASI *v.* NABA GOPAL CHAKI (1907) **I. L. R. 34 Calc. 305**

2.—*Practice—Dismissal of suit—Application by Receiver for liberty to sell—Power of Court—Costs.*—When a suit in which a Receiver has been appointed, has been dismissed, the Court has

RECEIVER—*concluded.*

no jurisdiction to give the Receiver any fresh power, as for instance, liberty to sell. RABEHOLME *v.* SMITH (1907) . . **I. L. R. 34 Calc. 336**

3.—*Sale by Receiver—Right of a party to suit to challenge validity of sale in a separate suit—Shebait of Thakur, a party—Right of succeeding shebait to recover property sold—Representation of Thakur by shebait continuing representation—Application in suit to set aside sale—Maintainability.*—A sale of properties the subject-matter of a suit, by the Receiver under the order of the Court, cannot, in the absence of fraud, be attacked collaterally by persons who were parties thereto or their representatives. *Wilkinson v. Gangadhar Sirkar, 6 B. L. R. 486,* referred to. Where one member of a joint Hindu family sued for partition of certain properties on the allegation that they were secular properties of the family and another resisted it on the ground that the properties were the absolute *debutter* properties of the family idol of which he was the *shebait* and a Receiver was appointed in that suit and he under the direction of the Court sold certain portions of the properties to meet the costs of the suit: *Held,* in a suit brought to recover the properties sold by persons claiming to be successors in office of the *shebait,* that the substantial question raised in the former suit was as to the real character of the properties sold and the *Thakur* was represented in it in the only manner possible, *viz.,* by the *shebait.* The succeeding *shebaits,* forming a continuing representation of the *Thakur's* property, were bound by the order for sale which it was not open to them to challenge in an independent action. *Prasanno Kumari v. Golab Chand, L. R. 2 I. A. 145, 152; Moharanee Shibeswaree Debia v. Mathura Nath Acharjo, 13 Moo. I. A. 270, 275; Jagadindra Nath v. Hemantha Kumari, 8 C. W. N. 809, L. R. 31 I. A. 203, 210; Benode Behari v. Nistarini, 9 C. W. N. 961: L. R. 32 I. A. 195: 2 C. L. J. 189,* relied on. *Quære*: Whether having regard to the purpose for which the properties were sold an application in the former suit to set aside the order would have succeeded. GORA CHAND LURKI *v.* MAKHAN LAL CHAKRAVARTTY (1907) . . . . **11 C. W. N. 489**

RECORD OF RIGHTS.

See BENGAL TENANCY ACT, s. 103.
11 C. W. N. 153

See LANDLORD AND TENANT.
I. L. R. 34 Calc. 57

——objection to—

—*Bengal Tenancy Act (VIII of 1885), ss. 103A, 111A—Draft Record-of-Rights, objection to—Entry made on objection—Final publication of Record-of-Rights—Presumption as to correctness of entry—Suit to declare entry erroneous—Limitation—Limitation Act (XV of 1877), Sch. II, Art. 14—Decree not produced—Recital in later*

RECORD OF RIGHTS—*concluded.*

decree produced, if evidence.—A suit by a party whose objection under s. 103A, Bengal Tenancy Act, to an entry in the draft Record-of-Rights has been rejected by the Revenue Officer, for a declaration of his rights is not governed by Art. 14, Sch. II of the Limitation Act. The order rejecting the objection under s. 103A, Bengal Tenancy Act, having no finality is not an order of a Government officer within the meaning of Art. 14, Sch. II of the Limitation Act. Further, the final publication of the Record-of-Rights merely raises a presumption of the correctness of the entry, and it is not necessary to bring a suit to avoid a presumption. Nature of remedy under s. 111A of the Bengal Tenancy Act discussed. *Agin Bindh v. Mohan Bickramshah, I. L. R. 30 Calc. 20,* followed. *Ashutose Nath v. Abdool, I. L. R. 28 Calc. 676,* referred to. *Semble*: The recital of the purport of a previous decree, not produced in a later one which has been produced, is evidence. RAMGULAM SINGH *v.* BISHNU PARGASH NARAIN SINGH (1906).
11 C. W. N. 48

RECOVERY OF RENT ACT (X OF 1859).

——s. 153—

See PRACTICE. . . **11 C. W. N. 112**

REDEMPTION.

See HINDU LAW . **I. L. R. 34 Calc. 372**

See MORTGAGE.

See TRANSFER OF PROPERTY ACT, ss. 92, 93. . . **I. L. R. 29 All. 481**

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See MORTGAGE. . **11 C. W. N. 1078**

—*Transfer of Property Act, s. 91*—Before confirmation of sale an auction purchaser has such a title in the property as entitles him to ask for redemption under s. 91 of the Transfer of Property Act. RADHA KISHUN MARWARI *v.* HEM CHANDRA BOSE (1907) . . . . **11 C. W. N. 495**

REDEMPTION DECREE.

See CIVIL PROCEDURE CODE.
I. L. R. 31 Bom. 527

REFERENCE TO CIVIL COURT.

See CIVIL PROCEDURE CODE, s. 103.
11 C. W. N. 430

REFUND OF OVERCHARGE.

See RAILWAYS ACT.
I. L. R. 31 Bom. 534

REGISTRAR, POWER OF.

See LEAVE TO SUE.
I. L. R. 34 Calc. 619

REGISTRATION ACT (III OF 1877).

——s. 17—

—*Registration—Division of a mortgage into two to escape registration.—Held,* that there is nothing in the Registration Act to render illegal the division of what was apparently one mortgage transaction relative to a loan of R198 into two mortgages of even date each for R99. RAMJI MAL *v.* CHHOTE LAL (1906) . . . . I. L. R. 29 All. 50

——s. 49—

See EXCHANGE. . 11 C. W. N. 342

——ss. 76, 77—

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I. L. R. 29 All. 284

REGISTRATION, SUIT FOR.

—*Indian Registration Act (III of 1877), ss. 76 and 77—Registration—Suit to compel registration—Grounds of such suit.*—Where a Registrar refused to register a document presented to him upon the grounds that there was not sufficient proof that the document was executed by the authority of the alleged executant and that there was undue and unexplained delay in presenting the document for registration, it was *held* that a suit would lie under s. 77 of the Indian Registration Act, 1877, to compel registration. *Held,* also, that in a suit under s. 77 of the Registration Act, the Court is only concerned with the genuineness of the document sought to be registered and not with its validity. *Kudrathi Begum* v. *Najib-un-nissa, I. L. R. 25 Calc. 93,* and *Raj Lakhi Ghose* v. *Debendra Chandra Majumdar, I. L. R. 24 Calc. 668,* referred to. KANHAYA LAL *v.* SARDAR SINGH (1907).
I. L. R. 29 All. 284

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——statements as to—

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11 C. W. N. 776

RELIGIOUS ENDOWMENTS ACT (XX OF 1863).

——ss. 5, 18—

See ENDOWMENT. I. L. R. 34 Calc. 587

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—*Appeal—Order granting leave to sue—"Decree"—Civil Procedure Code (Act XIV of 1882), s. 2.*—No appeal lies from an order made by the District Judge under s. 18 of Act XX of 1863 granting leave to bring a suit for the purpose of having the accounts taken of a religious endowment. Such an order is not a "decree" within the meaning of s. 2 of the Code of Civil Procedure. *Kazem Ali* v. *Azim Ali Khan, I. L. R. 18 Calc. 382,* referred to. MOZAFFER ALI *v.* HEDAYET HOSAIN. 1907.
I. L. R. 34 Calc. 584

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I. L. R. 30 Mad. 311

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I. L. R. 29 All. 184

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See APPEAL. . I. L. R. 29 All. 659; 11 C. W. N. 862

See RES JUDICATA.
I. L. R. 30 Mad. 203

1.—*Possession, suit for—Civil Procedure Code (Act XIV of 1882), ss. 561, 566—Lower Appellate*

REMAND—*concluded.*

Court, power of, on remand.—The plaintiff's suit for possession of certain lands after determination of the boundary between two estates was partially decreed by the Munsif. The defendant appealed, but the plaintiff did not appeal, nor file any objection under s. 561 of the Civil Procedure Code. The Subordinate Judge, on appeal, modified the decree in favour of the defendant. Plaintiff then appealed to the High Court, and the case was remanded for trial on a fresh investigation. The Subordinate Judge after a fresh enquiry passed a decree in favour of the plaintiff giving him more lands than what was given by the Court of first instance. On second appeal by the defendant: *Held*, that under the circumstances, the Subordinate Judge had no power to award to the plaintiff more than what he recovered in the Munsif's Court. *Bikramjit Singh* v. *Hossaini Begam, I. L. R. 3 All. 643*, distinguished. AGILUL HOSAIN *v.* DINO NATH DUTT (1907).
I. L. R. 34 Calc. 996

2.—*Civil Procedure Code, s. 578—Order for remand.*—Where an order of remand by the lower Appellate Court was not strictly in accordance with the provisions of s. 562 Civil Procedure Code: *Held*, that this amounted to an irregularity such as was covered by the provisions of s. 578, Civil Procedure Code. *Mohesh Chunder Das* v. *Jahiruddi Mollah, 5 C. W. N. 509: I. L. R. 28 Calc. 324.* TRAILOKHYA MOHINI DASI *v.* KALI PROSANNA GHOSE (1907) . . . **11 C. W. N. 380**

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REPEALED STATUTE.

—Mamlatdars' Courts Act (Bom. Act III of 1876), s. 4—Mamlatdars' Courts Act (Bom. Act II of 1906), s. 5—Mamlatdars' Court—Suit for possession of a house situate within a town—Jurisdiction—Act of procedure.—Per CURIAM:—The repealed statute is, with regard to any further operation, as if it had never existed. VAJECHAND *v.* NANDRAM (1907) . **I. L. R. 31 Bom. 545**

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REPRESENTATIVES.

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11 C. W. N. 163

—Civil Procedure Code (Act XIV of 1882), s. 244—Rent-sale of occupancy holding—Application to set aside sale by mortgagee—Transferable holding—Representative of judgment-debtor.—A person to whom a transferable occupancy holding was mortgaged before its sale in execution of a rent-decree is a representative of the judgment-debtor within the meaning of s. 244, Civil Procedure Code, and may apply to set aside the sale under that section. *Ishan Chunder Sirkar* v. *Beni Madhub Sirkar, I. L. R. 24 Calc. 62*, and *Asgar Ali* v. *Asaboddin Kazi, 9 C. W. N. 134*, followed. NISSA BIBI *v.* RADHA KISHORE MANIKYA (1906) . . **11 C. W. N. 312**

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GENERAL CASES.

1.—*Agra Tenancy Act (Local II of 1901), s. 199—Suit for ejectment in Revenue Court—Omission on part of defendant to plead title in himself—Res judicata.*—In a suit for ejectment under Act No. II of 1901 the defendants did not plead their own title to the plot in suit, and in fact did not oppose the suit for ejectment. *Held* that a subsequent suit brought in a Civil Court by the then defendants for proprietary possession of the same plot was barred by the principle of *res judicata*. *Rani Kishori* v. *Raja Ram, Weekly Notes, 1904, 109; Ashrafun-nissa* v. *Ali Ahmad, Weekly Notes, 1904, 141*, and *Inayat Ali Khan* v. *Murad Ali Khan, I. L. R. 27 All. 569*, distinguished. *Salig Dube* v. *Deoki Dube, Weekly Notes, 1907, 1*, and *Beni Pande* v. *Raja Kausal Kishore Prasad Mal Bahadur, I. L. R. 29 All. 160*, referred to. *Gokul Mandar* v. *Pudmanund Singh, I. L. R. 29 Calc. 707*, discussed. Bihari v. Sheobalak (1907).

I. L. R. 29 All. 601

2.—*Bengal Tenancy Act, ss. 107, 109, 109 A, 192—Settlement of rent, objection to.*—Where a tenant in his appeal before the Special Judge against an order for the settlement of rent purporting to have been made under s. 192 of the Bengal Tenancy Act did not take the objection that the settlement of rent was made contrary to the provisions of that section and without jurisdiction, and the decision of the Settlement Officer was affirmed by the Special Judge: *Held*, that the matter was *res judicata* and could not be reopened in the Civil Court owing to the operation of ss. 107, 109 and 109A of the Bengal Tenancy Act. Mohim Chandra Ray v. Kalitara Debya (1906).

11 C. W. N. 939

3.—*Civil Procedure Code (Act XIV of 1882), ss. 13, 562—Decision disallowing permanent tenure, no res judicata in a subsequent suit to receive allowance—Adimayavana, nature of—Grant of allowance, presumption of—No remand when suit not determined on a preliminary point—Suit by A to recover adimayavana allowance from B.* In a previous suit by *B* against *A* for redeeming land, *A* had set up an irredeemable *adimayavana tenure* in the land, which contention was overruled and a decree for redemption was made. The Court of first instance held that the suit was barred by *res judicata*, that the right to *adimayavana* allowance was not proved, and dismissed the suit. The lower Appellate Court reversed the judgment on both the points and remanded the suit for retrial. *Held* by the High Court on appeal, that the decision in the previous suit disallowing the *tenure* was no bar under s. 13 of the Code of Civil Procedure to the present suit for the *allowance*. The word *adimayavana* when applied to a tenure of land, imports a permanent tenure, but it may be used with reference to an allowance of money or grain rent charged on the land, and in that case it will not imply any tenure in favour of the grantee, but only an allowance. The fact that an allowance had been received out of certain lands for a long period from several successive owners, is proof of a grant of perpetual allowance charged on such land. *Vythilingam Pillay* v. *Kuthirevatath Nair, I. L. R. 29 Mad. 501*, referred to and followed. *Held, further*, that the decision of the Munsif on the right of he plaintiff to the perpetual allowance was not a decision on a preliminary point and the lower Appellate Court ought not to have remanded the suit under s. 562 of the Code of Civil Procedure. Mana Vikrama v. Gopalan Nair (1906) . . I. L. R. 30 Mad. 203

4.—*Redemption of mortgage, suit for—Civil Procedure Code, s. 13—Hindu law—Joint Hindu family—Nature of son's title.*—*Held*, that the dis-

RES JUDICATA—*continued.*

RES JUDICATA—*continued.*

missal of a suit for redemption of a mortgage of joint family property brought by the father in a joint Hindu family alone, would not be a bar to a subsequent suit for redemption by the sons, inasmuch as the sons' title was not through their father, but was separate and indepedent. *Ram Narain* v. *Bisheshar Prasad, I. L. R. 10 All. 411,* referred to. SUNDAR LAL *v.* CHHITAR MAL (1906).

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5.—*Res judicata—Civil Procedure Code (Act XIV of 1882), s. 13, Expl. II—Suit for redemption—Transfer of Property Act (IV of 1882), ss. 89 and 92 - Valid tender—Subsequent suit for recovery of damages on account of wrongful detention of the property by the mortgagee.*—*A* executed a usufructuary mortgage in favour of *B*, and undertook to redeem the mortgage on a certain date. On the day fixed for repayment *A* made a valid tender of what was due on the mortgage, and the tender was improperly refused by *B*. A suit was brought for redemption by *A*, which was decreed on condition of payment within 6 months of what was due on the date of tender. The amount was deposited in Court, and *A* was put in possession of the property. Subsequently *A* brought a suit for recovery of damages on account of wrongful detention of the property by *B*, between the date of tender and the date of delivery of possession. The defence was that the suit was barred by *res judicata*. *Held,* that inasmuch as the claim now set up might and ought to have been put forward in the redemption suit, and the mortgagee might and ought to have been called upon to account for the profits, which he has received from the mortgaged premises up to the date fixed in the redemption decree, the subsequent action for recovery of damages was barred. SATYABADI BEHARA *v.* HARABATI (1907).

I. L. R. 34 Calc. 223

2. ADJUDICATIONS.

6.—*Res judicata—Suit to set aside a decree on the ground of fraud—Sole question raised in the suit already decided in proceedings under s. 108 of the Code of Civil Procedure.*—In a suit to set aside a decree as having been obtained against the plaintiff by fraud, substantially the only ground relied upon was that the suit had been improperly instituted against the plaintiff as of full age when in fact he was a minor. This had been decided against the plaintiff in earlier proceedings between the parties under s. 108 of the Code of Civil Procedure. *Held,* that the suit was not maintainable. *Puran Chand* v. *Sheodat Rai, I. L. R. 29 All. 212,* followed. *Khagendra Nath Mahata* v. *Pran Nath Roy, I. L. R 29 Calc. 395,* distinguished. NIADAR MAL *v.* RAUNAK HUSAIN (1907) . . . . I. L. R. 29 All. 608

7.—*Civil Procedure Code (Act XIV of 1882), s. 13—Collector's decision under s. 13 of Act III of 1895 not questionable in subsequent suit in Civil Courts.*—Under s. 13 of Act III of 1895, the Collector has jurisdiction to determine whether lands

RES JUDICATA—*continued.*

are the emoluments of an office or not, and the parties to the proceeding are debarred by s. 13 of the Civil Procedure Code and the general principles of *res judicata* from re-agitating the same question subsequently in a Civil Court BALIJEPALLI SESHAYYA *v.* BALIJEPALLI SUBBAYYA (1906).

I. L. R. 30 Mad. 320

8.—*Decision in previous suit binding as res judicata between the co-defendants if the matter in issue in the subsequent suit actively contested at previous trial.*—A decision in a previous suit on a matter raised and actively contested between co-defendants in such suit will operate as *res judicata* in a subsequent suit in which such co-defendants are arranged as plaintiff and defendant. *Kandiyil Cheriya Chandu* v. *The Zamorin of Calicut, I. L. R. 29 Mad. 515,* followed. The fact that the defendant in the previous suit had no right of appealing against the decision because the suit was dismissed, will not affect he operation of the bar, when such defendant having the right to be joined as a plaintiff chose to contest the suit as a co-defendant. The Full Bench decision in *Somasundara Mudali* v. *Kulandai Velu Pillai, I. L. R. 28 Mad. 457,* is not in conflict with *Kandiyil Cheriya Chandu* v. *The Zamorin of Calicut, I. L. R. 29 Mad 515.* Where a decision dismissing a suit is in fact wholly against the defendant, such defendant can appeal against it. *Krishna Chandra* v. *Mohesh Chandra Saha, 9 C. W. N. 584,* approved. YUSUF SAHIB *v.* DURGI (1907) . . . I. L. R. 30 Mad. 447

9.—*Res judicata—Adjudications—Decision of Court under Land Acquisition Act (I of 1894)—Apportionment of compensation—Property held under the same title.*—A decision of the Court with respect to the apportionment of compensation money under the Land Acquisition Act should not be treated as *res judicata* affecting other parts of the claimant's property held under the same title. *Nobodeep Chunder Chowdhry* v. *Brojendro Lall Roy, I. L. R. 7 Calc. 406,* and *Mahadevi* v. *Neelamani, I. L. R. 20 Mad. 269,* referred to. *Ram Chunder Singh* v. *Madho Kumari, I. L. R. 12 Calc. 484,* distinguished. DIRGAJ DEO *v.* KALI CHARAN SINGH (1907).

I. L. R. 34 Calc. 466

3. ERRONEOUS DECISION.

10.—*Res judicata—Erroneous decision upon a point of law.*—An erroneous decision upon a point of law may yet, as between the parties to it but no further, be a sufficient *res judicata* to preclude them from re-agitating it. WAMAN *v.* HARI (1906).

I. L. R. 31 Bom. 128

4. ORDERS IN EXECUTION OF DECREE.

11.—*Civil Procedure Code, s. 13—Execution proceeding—Order permitting withdrawal of execution upon condition—Condition illegal and not bearing on any issue raised between parties—Subsequent application for execution—Right of decree-*

RES JUDICATA—*concluded.*

holder to disregard condition.—Where a decree-holder having put up certain properties of the judgment-debtor to sale in execution of his decree, bid Rs. 600 for it, but failed to deposit the earnest money and then applied to withdraw the execution; and the Court being of opinion that this was a dodge to avoid paying the earnest money, allowed the application, but subject to the condition that the same properties should be put up for sale first at the next application for execution and the decree-holder must bid R600 for it: *Held*, that the Court had no power to make such an order and it was not binding on the decree-holder so as to preclude him from proceeding to execute the decree against the other properties of the judgment-debtor. The order did not operate as *res judicata*. *Mungul Prosad Dichit* v. *Grija Kant Lahiri, L. R. 8 I. A. 123: I. L. R. 8 Calc. 51*, distinguished. JNANADA SUNDARI CHOWDHURANI *v.* NOKULESSWAR ROY CHOWDHURY (1906) . . **11. C. W. N. 236**

5. REPRESENTATIVE IN INTEREST.

12.—*Res judicata—Representative in interest—Purchaser at a sale for arrears of revenue—Persons claiming under paramount title.*—The purchaser of an entire estate at a sale for arrears of revenue does not claim title through the defaulting proprietor but claims under a paramount title, and a decree against the latter cannot constitute *res judicata* as against him. *Moonshee Buzlool Rahman* v. *Pran Dhun Dutt, 8 W. R. 222*, and *Radha Gobind Koer* v. *Rakhal Das Mukherji, I. L. R. 12 Calc. 82*, followed. *Boykuntonath Chatterjee* v *Ameeroonissa Khatoon, 2 W. R. 191*, and *Tara Pershad Mitter* v. *Ram Nursingh Mitter, 14 W. R. 283*, referred to. GADADHAR BOSE *v.* RADHA CHARAN PODDAR (1907).

I. L. R. 34 Calc. 868

RESPONDENT.

——death of, pending appeal—

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RESTITUTION OF CONJUGAL RIGHTS.

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See HINDU LAW—HUSBAND AND WIFE.

See MAHOMEDAN LAW.

1. EXCOMMUNICATION.

1.—*Restitution of conjugal rights—Husband and wife—Suit by an excommunicated member of a caste—Mussalman Kharwa Community of Broach—Custom.*—The plaintiff, an excommunicated member of the Mussalman Kharwa community of Broach, sued his wife (defendant No. 1) for restitution of conjugal rights. At the time of their marriage, the parties were members of the caste; but subsequently the plaintiff was excommunicated from his caste. The defendant contended that she should not be compelled by the Court to go and live with him as his wife before the plaintiff was re-admitted into the caste. *Held*, upholding the contention, that at the time of marriage she was not only a Mahomedan by faith but also a member of the Kharwa community: occupying that status, she married the plaintiff. It was, therefore, of the essence of the marriage contract that they married because they were members of that particular community and they must be regarded as having entered into the marital relation on the basis of that status. BAI JINA *v.* KHARWA JINA (1907)

I. L. R. 31 Bom. 366.

2. JURISDICTION OF COURTS.

2.—*Restitution of conjugal rights—Appeal—Jurisdiction—Valuation of suit—Suits Valuation Act (VII of 1887), ss. 11, 21—Jurisdiction of Munsifs—Civil Courts Act (XII of 1887), ss. 18, 19, 21—Practice.*—An appeal from a decree in a suit for restitution of conjugal rights, valued at less than 1,000 rupees and instituted in the Court of a Subordinate Judge without any objection by the defendant, lies to the District Court and not to the High Court. The plaintiff in a suit for restitution of conjugal rights is the proper person to value his suit; but if from improper motives he undervalues or overvalues it the Court must decide what should be the proper value. The decision in *Aklemannessa Bibi* v. *Mahomed Hatem, I. L. R. 31 Calc. 849*, as to the jurisdiction of a Munsif to entertain such a suit, is an *obiter dictum*. *Zair Husain Khan* v. *Khurshed Jan, I. L. R. 28 All. 545*, referred to. *Golam Rahman* v. *Fatima Bibi, I. L. R. 13 Calc. 232*, and *Mowla Newaz* v. *Sajidunnissa Bibi, I. L. R. 18 Calc. 878*, discussed and distinguished. JAN MAHOMED MANDAL *v.* MASHAR BIBI (1907).

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3. LEGAL CRUELTY.

3.—*Restitution of conjugal rights—Hindu Law—Husband and Wife—Cruelty—Matrimonial offence—Safety of wife in peril.*—*Per* HABINGTON, *J.*—It would not be safe to say that whatever is a defence to an action for restitution of conjugal rights in the case of a European would also be in every case a defence in the case of a Hindu, but the Court is not bound, in the case of Europeans and Indians alike, to order a wife to return to her husband if there is reasonable ground for apprehending that a return to that husband will imperil her safety. *Per* MOOKERJEE, *J.* The conduct of a Hindu husband, who brings a low caste woman

RESTITUTION OF CONJUGAL RIGHTS—*concluded.*

as his mistress in the house to live with him as a member of the family, and expels his wife and son from the family residence, amounts to cruelty within the meaning of the law, which justifies the wife to live separate from her husband and deprives the husband of his right to a decree for restitution of conjugal rights. The husband would not be entitled to succeed even if his conduct did not amount to cruelty but constituted a grave matrimonial offence. DULAR KOER *v.* DWARKA NATH MISSER (1905) . . **I. L. R. 34 Calc. 971**

4.—*Mahomedan law—Suit for restitution of conjugal rights—Legal cruelty—Other misconduct of the plaintiff pleaded as a defence to the suit.*—In a suit for restitution of conjugal rights, the parties being Mahomedans, if the defendant raises a plea of legal cruelty, the facts to be proved to establish such a plea are similar to those which must be proved to establish a similar plea under the English law. *Moonshee Buzloor Ruheem* v. *Shumsoonnissa Begum, 11 Moo. I. A. 551,* referred to. But in a suit for restitution brought by the husband, misconduct of the plaintiff falling short of legal cruelty may be a ground for the Court refusing relief. Thus where the plaintiff apparently only brought his suit on account of his wife having filed another suit against the plaintiff's father, and in his plaint accused his wife of immorality of the most serious kind, a charge which he totally failed to substantiate, it was *held* that the Court would be justified in refusing him relief. *Mackenzie* v. *Mackenzie,* [*1895*] A. *C. 384,* referred to. On the general facts of the case also it was found that the defendant had reasonable grounds for believing that her health and safety would be endangered if she returned to her husband's house, which was situated in a native State. HUSAINI BEGAM *v.* MUHAMMAD RUSTAM ALI KHAN (1907).
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RESTITUTION OF PROPERTY.

See CIVIL PROCEDURE CODE, ss. 244, 583.
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RESTRAINT ON ANTICIPATION.

See MARRIED WOMAN, PROPERTY OF.
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RESULTING TRUST.

See TRUSTS ACT.
I. L. R. 31 Bom. 222

RESUMPTION.

See CHAUKIDARI CHAKRAN LANDS.
I. L. R. 34 Calc. 109, 564

REVENUE.

—*Revenue Recovery Act II of 1864, s. 35—Applies only where party paying is tenant, mortgagor, or incumbrancer—Unregistered owner not bound to pay the revenue.*—The revenue due on land owned by one who is not the registered holder is not money which such owner is bound to pay under the Revenue Recovery Act, though it may be to his interest to do so and the registered holder voluntarily paying such revenue cannot recover it under s. 69 of the Contract Act. Neither can he recover it under s. 35 of the Revenue Recovery Act unless he is a tenant, mortgagor or incumbrancer of such land. BOJA SELLAPPA REDDY *v.* VEIDHACHALA REDDY (1906) . . . . **I. L. R. 30 Mad. 35**

REVENUE SALE.

See LANDLORD AND TENANT.
I. L. R. 34 Calc. 57

REVENUE SALE LAW.

—*Revenue Sale Law (Act XI of 1859), s. 54—Separate accounts—Sale of a share of revenue-paying estate in possession of Hindu lady, as female heir—What interest passes—Reversionary interest, if an incumbrance.*—When a share in a revenue-paying estate in respect of which a separate account had been opened was inherited by a Hindu lady from her father and was then sold for default in paying Government revenue: *Held,* that the complete owner's interest and not merely a life-estate in the share passed to the purchaser. The interest of a reversionary heir is not an incumbrance within the meaning of s. 54 of Act XI of 1859. BANALATA DASI *v.* MONMOTHA NATH GOSWAMI (1907).
11 C. W. N. 821

REVERSIONER.

See ADVERSE POSSESSION.
I. L. R. 30 Mad. 145

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See HINDU LAW—WIDOW.
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——gift to, by Hindu widow—

—*Gift by widow to presumptive reversioner.*—A gift by a Hindu widow of property, in which she has a widow's estate, to the presumptive reversioner has not the effect of accelerating the succession of such reversioner, if the transfer imposes on the reversioner obligations which would not have existed if the property had devolved on him by inheritance. SRIRAMULU NAIDU *v.* ANDALAMMAL (1906).
I. L. R. 30 Mad. 145

——interest of—

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REVERSIONER—*concluded.*

——rights of—

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See SALE FOR ARREARS OF REVENUE.
I. L. R. 34 Calc. 677

1.—*Civil Procedure Code, ss. 622, 623, 626 and 629—Review of judgment—Application for review rejected—Revision—Small Cause Court suit.*—An application for review of judgment in a Small Cause Court suit was rejected, wrongly, on the ground of a supposed deficiency in the Court-fee paid upon the application. *Held,* that this order was open to revision. *Ram Lal* v. *Ratan Lal, I. L. R. 26 All. 672,* distinguished. WILLIS *v.* JAWAD HUSAIN (1907). . . I. L. R. 29 All. 468

2.—*Discovery of fresh evidence—Laches—Negligence—Civil Procedure Code (Act XIV of 1882), ss. 623, 568.*—S. 623 exacts very strict conditions, so as to prevent litigants being negligent and enjoins the Court to require the facts as to the absence of negligence to be strictly proved. Where the defendants on the day after judgment had been given against them discovered fresh evidence which with diligence they might under the circumstances have obtained before or during the trial of the suit, and even after such discovery delayed for two weeks before making an application for review of judgment: *Held,* that the application was rightly dismissed. KESSOWJI ISSUR *v.* GREAT INDIAN PENINSULA RAILWAY COMPANY (1907).
I. L. R. 31 Bom. 381; L. R. 34 I. A. 115

REVISION.

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—*Review of judgment, application for—Civil Procedure Code (Act XIV of 1882), ss. 622, 623, 626, 629—Small Cause Court suit.*—An application for review of judgment in a Small Cause Court suit was rejected, wrongly, on the ground of a supposed deficiency in the court-fee paid upon the application. *Held,* that this order was open to revision. *Ram Lal* v. *Ratan Lal, I. L. R. 26 All. 672,* distinguished. WILLIS *v.* JAWAD HUSAIN (1907).
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RIGHTS OF PARTIES.

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——ascertainment of—

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RIGHT TO SUE.

—*Suit for rent—Relationship of landlord and tenant must be shown to arise out of contract or privity of estate.*—Before a plaintiff can succeed in a suit to recover rent, he must establish relationship of landlord and tenant existing between himself and the defendant and resting either on contract or privity of estate. MANJAPPA *v.* VENKATESH (1906).
I. L. R. 31 Bom. 159

RIPARIAN RIGHT.

See SECURITY TO KEEP THE PEACE.
I. L. R. 34 Calc. 935

—*Watercourse—Riparian proprietors—Ordinary and extraordinary use of water—Irrigation—Reasonable use—Injunction, mandatory and perpetual—Pleading—Proof.*—The use of the water of a watercourse for purposes of irrigation is not a primary use so as to entitle an upper riparian proprietor to consume the whole of the water for such purpose, without regard to the effect such use may have on proprietors lower down the watercourse. *Held,* that the use of the water for purposes of irrigation was artificial or extraordinary even when it was found that the country was dry, rocky and parched, and that it was absolutely necessary that the lands, which were paddy lands, should be irrigated from the watercourse in order to produce

RIPARIAN RIGHT—*concluded.*

paddy. The authorities reviewed by MOOKERJEE, *J.* An upper riparian proprietor having erected a dam across the watercourse so as to cut off completely the supply of water to proprietors lower down, a mandatory injunction was granted to compel the restoration of the watercourse to its natural form and the wrong-doer perpetually restrained from obstructing the watercourse or effacing it. BELBHADAR PERSHAD SINGH *v.* SHEIKH BARKAT ALI (1906). 11 C. W. N. 85

ROAD CESS.

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ROAD CESS ACT (BENG. IX OF 1880).

——ss. 6, 72—

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ROAD CESS DEPARTMENT.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 54. I. L. R. 34 Calc. 207

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RULING CHIEF.

——suit against—

—*Civil Procedure Code, s. 433—Permission to sue granted in absence of the necessary conditions precedent—Jurisdiction.*—A suit for the recovery of arrears of salary was brought in the Court of the Subordinate Judge of Agra against the

RULING CHIEF—*concluded.*

Maharaja of Jaipur. The plaintiff obtained the consent of the Governor General in Council to the institution of the suit granted ostensibly in accordance with the provisions of s. 433 of the Code of Civil Procedure; but in fact none of the conditions enumerated in cl. (2) of the section existed. *Held,* that the suit was not maintainable. MAHARAJA OF JAIPUR *v.* LALJI SAHAI (1907) I. L. R. 29 All. 379

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SALE.

See CERTIFICATE OF SALE.

See FRAUDULENT CONVEYANCE. I. L. R. 34 Calc. 999

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——by debtor to defeat creditor—

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——of property by Inferior Court, attached by Superior Court—

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SALE—*concluded.*

——of Property subject to a charge—

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SALE FOR ARREARS OF RENT.

—*Surplus sale-proceeds—Landlord's right to surplus sale-proceeds—Priority between landlord and mortgagee—Bengal Tenancy Act (VIII of 1885), s. 169.* - Where a tenure, which had been mortgaged by the tenure-holder, was sold in execution of a decree for rent obtained by the landlord and the balance of the sale-proceeds, after deducting the costs of the decree-holder and what was due to him under the decree, was paid into Court:—*Held*, that under s. 169 of the Bengal Tenancy Act the landlord was entitled to be paid out of the sale-proceeds in Court the amount of rent due in respect of the tenure between the institution of the suit and the date of the sale, in priority to the mortgagee. PRABAL CHANDRA MUKERJEE *v.* JADUPATI CHAKRAVARTI (1907) . . . I. L. R. 34 Calc. 724

SALE FOR ARREARS OF REVENUE.

1.—*Act XI of 1859, ss. 5, 6, 7, 14, 17, 33—"Year," "current year," meaning of—Estate under attachment by order of judicial authority—Estate under attachment or managed by a revenue officer—Common manager under the Bengal Tenancy Act, effect of appointment of—Proceeding when share of estate is not sold at auction sale—Declaration of sale of entire estate—Notice of declaration—Notification of sale—Sale of separate share—Specification—Suit to set aside sale—Certificate of sale—Bengal Act VII of 1868, s. 8—Irregularity in serving or posting notice.*—The word "year" in the Revenue Sale Law means the official year; and "current year" is the official year within which the different *kists* of revenue have to be paid. The case of an estate managed by a common manager appointed under the Bengal Tenancy Act is excluded from the operation of s. 5 of Act XI of 1859, nor does management by such common manager fall within s. 17 of the Act. Non-publication of notice under s. 7 of Act XI of 1859 does not affect the sale. Under s. 8 of Bengal Act VII of 1868 after the grant of certificate the Court is precluded from going into the question whether notice were duly served or posted provided that they were issued. It is not necessary under s. 14 of Act XI of 1859 to give notice to the co-sharers of the declaration which has to be made under the section calling on them to buy up the shares in arrears within the period of ten days. *Gosain Chutturbhooj Das* v. *Ishri Mul, I. L. R. 21 Calc. 844*, referred to. BHAWANI KOER *v.* AFZAL HUSSAIN (1907) . . . I. L. R. 34 Calc. 38

2.—*Sale for arrears of revenue—Bengal Act XI of 1859, s. 25, as amended by s. 2 of Bengal Act VII of 1868—Order setting aside a sale—Review—"Final," meaning of—Commissioner, power of*—The word "final" in s. 25 of Bengal Act XI of 1859, means at least "not open to review." The Commissioner or any Revenue Authority has no power to review his order annulling a sale held for arrears of Government revenue. *Lala Pryag Lal* v. *Jai Narayan Singh, I. L. R. 22 Calc. 61* referred to. BAIJNATH RAM GOENKA *v.* NAGAR KUMAR SINGH (1907) . . I. L. R. 34 Calc. 67

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See WAIVER . . . 11 C. W. N. 8

1. INVALID SALES.

1.—*Civil Procedure Code, ss. 311, 312 and —Execution of decree—Sale in execution—Objection subsequently taken by the judgment-debtor that the property sold was not legally sale —Estoppel.*—*Held*, that a judgment-debtor might have raised objections to a sale in execution of a decree against him, but who have refrained from doing so, and who might have appealed against the order for sale, has no right, after the sale has been carried out, to prefer an objection that the property sold was not legally saleable. *Rajkhibar Misr* v. *Bechu Bhagat, I. L. R. 7 641*, and *Durga Charan Mandal* v. *Kali Prasad Sarkar, I. L. R. 26 Calc. 727*, followed. U v. JAS RAM (1907) . . I. L. R. 29 All. 6

2. JURISDICTION.

2.—*Sale in execution of decree—Sale by inferior Courts of property attached by a supe*

SALE IN EXECUTION OF DECREE—*continued.*

Court—Jurisdiction—Civil Procedure Code (Act XIV of 1882), ss. 284, 285.—Where the same property is under attachment by two Courts of different grades, a sale effected by the Court of lower grade is not a nullity. S. 285 of the Code of Civil Procedure is a directory section dealing with procedure, and does not take away the jurisdiction to sell conferred on the Court by s. 284. GOPI CHAND BOTHRA *v.* KASIMUNNISSA KHATUN (1907).
I. L. R. 34 Calc. 836

3. MORTGAGED PROPERTY.

3.—*Transfer of Property Act (IV of 1882), ss. 67 and 99—Sale of mortgaged property otherwise than under s. 67, void or voidable—Remedy by application or suit—Jurisdiction—Right of redemption—Civil Procedure Code (Act XIV of 1882), s. 244—Sale, confirmation of.*—*Held (by the Full Bench),* that a sale held in contravention of the provision of s. 99 of the Transfer of Property Act is not a nullity but an irregular and voidable sale. Such a sale can be avoided by an application under s. 244, Civil Procedure Code, before or after confirmation of the sale on the ground that the provisions of s. 99 of the Transfer of Property Act have been contravened; but if the application is made after confirmation the applicant has to prove further that owing to fraud or other reasons he was kept in ignorance of the sale proceedings and the proceedings preliminary to sale. ASHUTOSH SIKDAR *v.* BEHARI LAL KIRTUNIA (1907) . . . . **11 C. W. N. 1011; I. L. R. 35 Calc. 61**

4.—*Simple mortgage—Purchaser at such sale cannot maintain suit for possession against purchasers of the equity of redemption subsequent to mortgage but prior to suit, who were not joined as parties.*—*A*, who held lands in kanom tenure, executed a simple mortgage on them in favour of *B* and subsequently sold the properties to *C*. Subsequent to such sale *B* brought a suit on his simple mortgage against *A* without making *C* a party, and obtained a decree for sale. *D* became purchaser at the sale held in execution of a decree. In the suit by *D* against *A* and *C* for possession of the properties purchased at the Court sale: *Held*, that *D* was not entitled to sue for possession, as all that passed to him at the sale was the right of *B* as a simple mortgagee. *Hargu Lal Singh* v. *Gobind Rai, I. L. R. 19 All. 541,* followed. ENTHOLI KIZHAKKIKANDY KANARAN *v.* VALLATH KOYLIL UNNOOLI (1907) . . **I. L. R. 30 Mad. 500**

4. PURCHASERS, TITLE OF.

5.—*Civil Procedure Code, s. 316—Execution of decree—Decree reversed before confirmation of sale.*—*Held,* that the title of an auction purchaser at a sale held in execution of a decree does not become absolute if the decree under which the sale took place is reversed at any time before

SALE IN EXECUTION OF DECREE—*concluded.*

a certificate of sale is granted to the purchaser. RAM SUKH *v.* RAM SAHAI (1907).
I. L. R. 29 All. 591

6.—*Sale in execution—Right of person deriving title from a purchaser at such sale—Such person's rights not affected by any error or fraud in procuring the decree—Decree passed under such circumstances only voidable not void.*—A decree passed by a Court having jurisdiction over the subject-matter, is not void but only voidable when it is passed under a misapprehension or is brought about by fraudulent proceedings. The party against whom the decree is passed has only an equity to set aside the proceedings. Where property sold in execution of such a decree is purchased by the decree-holder and by him sold for value to a third party who has no notice of any defect in the decree, the equitable right to set aside such decree cannot prevail against the rights of the subsequent purchaser for value without notice. A person claiming through a Court purchaser, is entitled to rely upon the plea that he is a *bona fide* purchaser for value without notice, though he cannot claim the rights of a stranger purchasing at Court sale. *Marimuthu Udaiyan* v. *Subbaraya Pillai, 13 Mad. L. J. 231,* followed. SHEIK ISMAL ROWTHER *v.* RAJAB ROWTHER (1906) . . **I. L. R. 30 Mad. 295**

5. SETTING ASIDE SALE.

7.—*Sale, setting aside of—Execution of decree—Sale by Collector—Application to Court by judgment-debtor to set aside sale—Refusal by the Court—Appeal—Collector's power—Rules 16 and 17 of the Local Rules and Orders made under enactments applying to Bombay—Civil Procedure Code (Act XIV of 1882), ss. 320, 310A and 244.*—*Held,* that s. 310A of the Code applies even if the execution proceedings be referred to the Collector, who has no power to set aside a sale under the provisions of the Code. There is nothing in the section which precludes the Court from setting aside the sale merely because it had been confirmed. As s. 310A prescribes that the Court *shall* pass an order setting aside the sale whenever its provisions are complied with, the order refusing to set aside the sale reversed. PITA *v.* CHUNILAL (1906).
I. L. R. 31 Bom. 207

SAMBALPUR.

See JURISDICTION OF CIVIL COURTS.

SANCTION FOR PROSECUTION.

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1. DISCRETION IN GRANTING SANCTION . 363
2. POWER TO GRANT SANCTION . . 363.
3. REVOCATION OF SANCTION . . 363.

SANCTION FOR PROSECUTION— *continued.*

1. DISCRETION IN GRANTING SANCTION.

1.—*Criminal Procedure Code (Act V of 1898), s. 195—Sanction to prosecute—Delay, ground for refusal—Sanction by successor in office.*—Applications for sanction to prosecute ought to be made promptly or the delay should be satisfactorily accounted for. *Balwant Singh* v. *Umed Singh, I. L. R. 18 All. 203,* followed. Where there was a delay for nearly one year in applying for sanction, and the delay was not accounted for: *Held,* that the application ought to have been refused. A Munsif has jurisdiction to grant sanction under s. 195, Code of Criminal Procedure, in respect of an offence committed before his predecessor in office. *Krishna Gobinda Dutt, 9 C. W. N. 859,* distinguished and doubted. DHARAMDAS KAMAR v. SAGORE SANTRA (1906). **11 C. W. N. 119**

2. POWER TO GRANT SANCTION.

2.—*Criminal Procedure Code (Act V of 1898), s. 195, sub-s. (1), cl. (b), s. 503—Commission to examine witness—Commissioner's power to grant sanction for the prosecution of a witness examined by him—"Court."*—During the pendency of a Sessions case a witness was examined on commission under s. 503, Criminal Procedure Code. Subsequently the Deputy Magistrate who examined the witness on commission, being applied to, granted sanction for the prosecution of the witness under s. 193, Indian Penal Code. *Held,* that the proper authority to grant sanction for the prosecution of the witness was the Sessions Court and not the Deputy Magistrate, who acted only as Commissioner. Although a Commissioner for the examination of a witness under s. 503, Criminal Procedure Code, may be a Court within the meaning of that section for the purpose of issuing process against the witness and for recording his evidence, still it is not a 'Court' within the meaning of s. 195, sub-s. (1), cl. (*b*). The word "Court" in s. 195, sub-s. (1), cl. (*b*), Criminal Procedure Code, must mean the Court whose duty it is to consider evidence and to decide whether it is true or false. SAADUT ALI KHAN v. EMPEROR (1907) . . . . . **11 C. W. N. 909**

3. REVOCATION OF SANCTION.

3.—*Sanction for prosecution—Revocation of the sanction—Appeal, pendency of—Prejudice to appellant—Doubtful prosecution—Criminal Procedure Code (Act V of 1898), s. 195—Practice.*—Where the prosecution of a person for giving false evidence, forgery, and using as genuine a forged document in a suit, pending an appeal from the judgment passed therein, would delay and possibly defeat the appeal, and where the lower Appellate Court had declared that the evidence on which it was proposed to proceed was unsatisfactory to a great extent: *Held,* that it was neither necessary nor desirable to grant sanction in such

SANCTION FOR PROSECUTION— *concluded.*

a case pending the appeal, but that the proper course would be to await the conclusion of the litigation and then to move the higher Courts to take action, if necessary, in the ends of public justice; and that the present sanction should, therefore, be revoked. *In re Shri Nana Maharaj, I. L. R. 16 Bom. 729; In re Devji valad Bhabani, I. L. R. 18 Bom. 681; Rex* v. *Ashburn, 8 C. & P. 50, and In re Muthukudam Pillai, I. L. R. 26 Mad. 190,* referred to. *In the matter of the petition of Ramprashad Hazra, B. L. R. Sup. 426,* distinguished. JADU LAL SAHU v. LOWIS (1907). **I. L. R. 34 Calc. 848**

4.—*Criminal Procedure Code (Act V of 1898), s. 195, cls. (4) and (6)—Sanction for prosecution by Munsif, affirmed by District Judge—High Court's power to interfere—Requisities of a valid sanction—Questions of guilt to be gone into.*—Where sanction to prosecute a person given under s. 195, Code of Criminal Procedure, was couched in such general terms that it was impossible to say exactly what offences were imputed to him and in connection with what deeds he was charged with having committed them: *Held,* that the sanction was illegal and ought to be set aside. Sanction to institute criminal proceedings should be in express terms and should strictly comply with the provisions of the law. It is not a sufficient compliance with the law, if the necessary elements have to be gathered from the Court's judgment by implication. No sanction should be granted unless the Court has made up its mind that the accused has committed the offences for which he is to be prosecuted. That question ought not to be left over for consideration at the trial. Where sanction to prosecute given by a Munsif was confirmed on appeal by the District Judge: *Held,* that the High Court has authority to interfere under s. 195, cl. (6), Code of Criminal Procedure. HABIBUR RAHMAN v. MUNSHI KHODARUX (1906). **11 C. W. N. 195**

5.—*Criminal Procedure Code, s. 195 (6)—Refusal of sanction.*—The revocation by the Appellate Court of a sanction given by the Court of First Instance, is a refusal of sanction within the meaning of sub-s. (6), and an appeal lies therefrom to the High Court as well as in cases where the sanction refused by the Court of First Instance is granted by the Appellate Court. *Palaniappa Chetti* v. *Annamalai Chetti, I. L. R. 27 Mad. 223,* approved. An order revoking a sanction is a refusal of a sanction just as an order confirming a sanction is an order giving a sanction. MUTHUSWAMI MUDALI v. VEENI CHETTI (1907). **I. L. R. 30 Mad. 382**

SEA CUSTOMS ACT (VIII OF 1878).

——ss. 18, 1—

See DETENTION OF GOODS.
I. L. R. 34 Calc. 511

SEARCH BY POLICE.

See PUBLIC OFFICER.
I. L. R. 29 All. 567

SECOND ADOPTION, VALIDITY OF.

See HINDU LAW—ADOPTION.
11 C. W. N. 12

SECOND APPEAL.

See CONTRIBUTION, SUIT FOR.
I. L. R. 30 Mad. 212

See JURISDICTION.
I L R. 34 Calc. 853

——power of High Court in—

See LANDLORD AND TENANT.
I. L. R. 34 Calc. 718

1.—*Civil Procedure Code, s. 584—Second appeal—Exclusion of evidence, an error of law—Civil Procedure Code (Act XIV of 1882), s. 584.*—Where in a rent suit, the Court of first appeal found as a fact that a certain amount was payable by the tenant as rent: *Held*, that the High Court on second appeal can set aside the finding when the Court of first appeal wrongly excluded the settlement proceedings from its consideration and disregarded the evidence of road-cess returns filed by the tenants, and thereby committed errors of law. MOHIM CHANDRA ROY *v.* KALI TARA DEBYA (1907).
11 C. W. N. 1028

2.—*Civil Procedure Code, s. 584—Finding of facts.*—In a second appeal the High Court can interfere where there is no evidence to justify the finding of fact arrived at by the lower Appellate Court. PEARY MOHAN MUKERJEE *v.* JOTI KUMAR MUKERJEE (1906). 11 C. W. N. 83

3.—*Limitation—Limitation Act (XV of 1877), Sch. II, Art. 179—Where second appeal preferred, time runs from date of order finally disposing of such appeal.*—Where a second appeal is preferred and an order is made by the Court to which the appeal is preferred which has the effect of finally disposing of the appeal, time runs from the date of such order; and it makes no difference that such second appeal was withdrawn by the appellant. *Patloji* v. *Ganu, I. L. R. 15 Bom. 370*, dissented from. *Abdul Rahiman* v. *Maiden Saiba, I. L. R. 22 Bom. 506*, dissented from. PERIA KOVIL RAMANUJA PERIYA JEEYANGAR *v.* LAKHSHMI DOSS (1906) . . . . I. L. R. 30 Mad. 1

4.—Where in a second appeal the question was whether certain lands appertained to plaintiff's tenure: *Held*, that a finding of the lower Appellate Court thereon which amounted merely to an expression of opinion could not be accepted as a finding displacing the finding of the First Court and, further, that the lower Appellate Court had erred in law in disregarding certain evidence without

SECOND APPEAL—*concluded.*

giving sufficient reasons for rejecting it. TRAILOKYA MOHINI DASI *v.* KALI PROSANNA GHOSE (1907) . . . . . 11 C. W. N. 380

5.—*Civil Procedure Code (Act XIV of 1882), s. 586.*—In suits for contribution no second appeal will lie under s. 586 of the Code of Civil Procedure if the subject-matter of the suit is less than R500. In determining whether second appeals lie in such cases in execution proceedings, the amount of subject-matter of the suit and not the amount sought to be recovered in execution must be taken into consideration. MAVULA AMMAL *v.* MAVULA MARACOIR (1906) . . . . I. L. R. 30 Mad. 212

6.—*Decree—Execution—Stay of execution on furnishing security—Execution against surety—Surety's liability—Civil Procedure Code (Act XIV of 1882), s. 253.*—The execution of a decree passed in plaintiff's favour was stayed pending appeal by the defendant on his furnishing security. Afterwards the plaintiff having proceeded in execution against the defendant and the surety, the Court allowed the plaintiff's claim against the surety. In a subsequent execution proceeding the plaintiff having presented a darkhast for further execution against the surety, the Court passed an order allowing the claim. The order was confirmed in appeal. On second appeal by the surety: *Held*, dismissing the second appeal, that it was not open to the surety to re-open the question as to his liability, he having accepted the finding as to his liability in the prior execution proceeding and having abandoned the point in the lower Appellate Court in the present proceeding. WAMAN *v.* HARI (1906) . I. L. R. 31 Bom. 128

——abatement of—

7.—*Substitution of parties in second appeal—Limitation Act (XV of 1877), Sch. II, Art. 175 C.*—Where one of the plaintiffs respondents in a second appeal against a decree for rent passed in their favour had died and no application was made to bring in his heirs within the period allowed by Art. 175C, Sch. II of the Limitation Act:—*Held*, that the appeal had abated so far as the deceased respondent was concerned, but that the appellants were entitled to go on with the appeal as against the other respondents. *Chandarsang Versabhai* v. *Khimabhai Raghabhai, I. L. R. 22 Bom. 718*, referred to. UPENDRA KUMAR CHAKRAVARTI *v.* SHAM LAL MANDAL (1907).
I. L. R. 34 Calc. 1020

SECOND MORTGAGEE, LIEN OF.

See MORTGAGE. . 11 C. W. N. 284

SECONDARY EVIDENCE

See EVIDENCE. . I. L. R. 34 Calc. 293

See PAROL EVIDENCE.
I. L. R. 30 Mad. 386

SECURITY FOR GOOD BEHAVIOUR.

See CRIMINAL PROCEDURE CODE, s. 110.

1.—*Criminal Procedure Code (Act V of 1898), s. 110—Previous acquittal for dacoity—Proceeding to bind down on failure of prosecution, if legal.*—Where a person has been tried for dacoity and acquitted, he ought not to be proceeded against under s. 110, Code of Criminal Procedure, on matters deposed to and disbelieved at the trial for dacoity. A person acquitted of dacoity cannot be bound over under s. 110, Code of Criminal Procedure, on the evidence merely of persons stating that they began to suspect him since the dacoity case. KISMAT AKANDA *v.* EMPEROR (1906) . **11 C. W. N. 129**

2.—*Criminal Procedure Code (Act V of 1898), s. 110—Proceeding to bind down for good behaviour upon failure of prosecution for offences under ss. 380, 412 and 457, Penal Code (Act XLV of 1860)—Evidence of repute.*—Proceedings under s. 110, Code of Criminal Procedure, ought not to be instituted with a view to bind down persons on an indefinite charge, after prosecutions against them on definite charges under the Penal Code have failed. Persons ought not to be bound down under s. 110, Code of Criminal Procedure, upon the mere statements of witnesses that they suspect or are under the impression that the persons proceeded against are thieves or dacoits, when no fact is mentioned to indicate that there was sufficient reason for their suspicion or impression. ALEP PRAMANIK *v.* KING-EMPEROR (1906) . . . **11 C. W. N. 413**

3.—*Criminal Procedure Code (Act V of 1898), s. 110, cls. (d) and (f)—General repute, evidence of, admissibility of—Evidence if must be of neighbours—Evidence of misconduct committed long ago, value of—Joinder of charges in a proceeding under s. 110—S. 257 (1), Criminal Procedure Code, sufficient compliance with.*—In s. 110, cl. (*f*), Criminal Procedure Code, a man of desperate and dangerous character means a man who has a reckless disregard of the safety of the person or the property of his neighbours, and under that clause evidence of general repute is not admissible in evidence. Evidence of acts of extortion committed by a person, unless those acts were accompanied by acts causing danger to the person and properties of other persons, is not sufficient to bring his case within cl. (*f*) of s. 110, Criminal Procedure Code. The law as to the joinder of charges against a person accused of definite offences has no application to an inquiry under s. 110, cl. (*d*). *Subramania Ayyer* v. *King-Emperor, I. L. R. 25 Mad. 61,* referred to and distinguished. On an enquiry whether the defendant is a habitual offender, evidence of acts of misconduct committed by him years ago is admissible in evidence as indicating the formation of the habit, but such evidence unless supplemented by evidence of misconduct committed by the defendant within a year or so before the institution of the proceeding under s. 110, Criminal Procedure Code, cannot justify the making of the order under s. 118, Criminal Procedure Code. When the persons against whom proceeding under s. 110, Criminal Procedure Code, is instituted for being a habitual offender is a well-known resident of a city, his fellow citizens though not living in his immediate neighbourhood are competent witnesses to prove his general repute. It is a sufficient compliance with the requirements of s. 257 (1), Criminal Procedure Code, if a Magistrate while rejecting an application for summoning further defence witness states facts which have led him irresistibly to the conclusion that the application was for no other purpose than that of vexation or delay or defeating the ends of justice, although he does not say expressly that the application was for that purpose. WAHID ALI KHAN *v.* THE EMPEROR (1907). **11 C. W. N. 789**

SECURITY TO KEEP THE PEACE.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), ss. 106, 107.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 125 . **I. L. R. 34 Calc. 1**

See UNLAWFUL ASSEMBLY. **11 C. W. N. 176**

1.—*Criminal Procedure Code, s. 106—Sentence, enhancement on appeal—Maintaining a sentence in its entirety though acquitting on some of several charges is enhancement—Appellate Court cannot make an order for security when original conviction not by one of the Courts specified in s. 106.*—Where the Magistrate convicted the accused of two distinct offences and passed only a single sentence for both, and the Appellate Court acquitting the accused of one of the offences maintained the sentence in its entirety: *Held*, that this amounted to an enhancement of the sentence passed for the offence, the conviction for which alone was maintained. An order for security under s. 106 of the Code of Criminal Procedure cannot be made by the Appellate Court unless the conviction appealed against was by a Court of the description specified in the first paragraph of the section. PARAMASIVA PILLAI *v.* EMPEROR (1906). **I. L. R. 30 Mad. 48**

2.—*Security to keep the peace—Wrongful act—Ascertainment of the rights of the parties—Which party should be bound down—Criminal Procedure Code (Act V of 1898), s. 107—Riparian right—Right to khuntagari.*—The preventive jurisdiction of a Magistrate under s. 107 of the Criminal Procedure Code must be exercised with caution. If the existence of a right claimed by one party in a proceeding under the section is denied by the opposite party, and is not quite patent, the Magistrate should always endeavour to ascertain for the purposes of the proceeding their respective rights and liabilities, and not in all cases treat them as matters proper for the Civil Court exclusively. Where a doubt exists as to the existence of the rights and obligations, respectively, of the parties, the Magistrate should bind both parties down. Where, however, there is no doubt, the party

SECURITY TO KEEP THE PEACE— *continued.*

in the wrong should be bound down, and not the one who has the legal right. No order of the Magistracy should in any way encourage the infringement of a legal right, or prevent the exercise of such right in a legal way, or do away with, even temporarily, the performance of an obligation. The right to the foreshore is a riparian right and ordinarily goes with the land above, and the proprietor has *prima facie* the right of *khuntagari* or tolls. *Dhunput Singh* v. *Denobundhu Saha, 9 C. L. R. 279,* followed. DINDAYAL MOZUMDAR *v.* EMPEROR (1907) . . **I. L. R. 34 Calc. 935**

3.—*Criminal Procedure Code (Act V of 1898), s. 106—Land dispute—Order binding down persons convicted of rioting—Propriety—Indian Penal Code (Act XLV of 1860), s. 147.*—Where on the complainant trying to take possession of land in the occupation of the accused, the accused used more force than was necessary to prevent the complainant's party doing so. *Held,* that although the accused were rightly convicted of the offence of rioting under s. 147, Indian Penal Code, they should not be bound down under s. 106, Criminal Procedure Code, to keep the peace, as that would have the effect of preventing the accused from resisting any further attempt by the complainant to take possession of the land. NAHAR KHAN *v.* EMPEROR (1907). **11 C. W. N. 840**

4.—*Criminal Procedure Code (Act V of 1898), ss. 107, 112. 144, 526—Dispute regarding property—Bona fide dispute—Order requiring security from one party if proper—Initiation of proceeding, under s. 107, ground for—Special constables, appointment of defendants as—Reasonable apprehension of failure of justice—Transfer—Indefinite order under s. 144.*—Where two parties had both applied to the Land Registration Court for registration of their names as proprietors of an estate, and pending these proceedings, a Magistrate instituted proceeding under s. 107 Code of Criminal Procedure, against one of the disputing parties and it was contended on their behalf that there being a *bona fide* dispute between the parties as to title and possession, the proceeding under s. 107, Code of Criminal Procedure, taken against one party alone to the exclusion of the other would prejudice the former in the land registration proceedings: *Held,* that such a consideration was foreign to the matter under enquiry in the proceeding under s. 107, Code of Criminal Procedure. *Held,* further, that the question whether the one party or the other were in peaceful possession would have to be decided in the proceeding, but no objection could on that account be taken to the initiation of proceeding under s. 107, Code of Criminal Procedure, against one or the other party, if on the facts presented before the Magistrate at the time of its initiation it appeared that such party were out of possession and were seeking to obtain possession by unlawful means which were likely to cause a breach of the peace. Where some of the party against whom proceeding under s. 107,

SECURITY TO KEEP THE PEACE— *concluded.*

Code of Criminal Procedure, was instituted were further appointed special constables although the latter order was in abeyance at the time they moved the High Court: *Held,* that in consequence of the order the petitioners might have a reasonable apprehension that they would not have a fair and impartial trial. The High Court, therefore, transferred the case from the Magistrate's file. The Magistrate having allowed bail to the petitioners on condition of their undertaking that no attempt would be made by them or their agents to realise rent by force, and nothing would be done to induce a breach of the peace. *Held,* that the condition could not be imposed under s. 112, Code of Criminal Procedure, and should be struck out of the bail bond. Where an order purporting to be made under s. 144, Code of Criminal Procedure, directed the petitioners "not to commit any act that may likely induce a breach of the peace and not to take forcible possession of the village which is not in their possession." *Held,* that the order was indefinite and not in accordance with the terms of the section. BIBEE KULSUM *v.* UMATUL MEHDI (1906) . . **11 C. W. N. 121**

——order for—

5.—*Criminal Procedure Code (Act V of 1898), s. 106 (3)—Order for security cannot be made by Appellate Court when original conviction not by one of the Courts specified in the section.*—An order for security cannot be made under s. 106 (3) of the Code of Criminal Procedure by a Court of appeal or revision which is one of the Courts specified in the section, when confirming the original conviction of a Court which is not one of those specified therein. *Muthia Chetty* v. *Emperor, I. L. R. 29 Mad. 190,* referred to and doubted. DORASAMI NAIDU *v.* EMPEROR (1906). **I. L. R. 30 Mad. 182**

SEDITION.

See CONFISCATION.
I. L. R. 34 Calc. 986

—*"Swaraj"—Incitement to secure "swaraj"—Security for good behaviour—Seditious language at a public meeting—Criminal Procedure Code (Act V of 1898), s. 108—Indian Penal Code (Act XLV of 1860), s. 124A.*—The term "*swaraj*" does not necessarily mean government of the country to the exclusion of the present Government, but its ordinary acceptance is "home rule" under the Government. The incitement of the members of a public meeting to exert themselves to secure "*swaraj*" does not amount to the offence of sedition under s. 124A of the Penal Code, and is consequently not within the purview of s. 108 of the Criminal Procedure Code. BENI BHUSHAN ROY *v.* EMPEROR (1907) . . . **I. L. R. 34 Calc. 991**

SELF-ACQUIRED PROPERTY.

See HINDU LAW—JOINT FAMILY.
I. L. R. 29 All. 244

SENTENCE.

See IMPRISONMENT.

1.—*Enhancement of sentence on appeal—Appellate Court.*—Where the Magistrate convicted the accused of two distinct offences and passed only a single sentence for both and the Appellate Court acquitting the accused of one of the offences maintained the sentence in its entirety : *Held*, that this amounted to an enhancement of the sentence passed for the offence, the conviction for which alone was maintained. PARAMASIVA PILLAI *v.* EMPEROR (1906) . . . . I. L. R. 30 Mad. 48

2.—*Criminal Procedure Code, s. 423—Sentence, enhancement of—No enhancement when aggregate period of imprisonment reduced, although fine imposed in addition.*—Where the aggregate period of imprisonment awarded on appeal is to any extent less than the period of the original sentence, the fact that a fine is imposed by the Appellate Court is no enhancement of the sentence within the meaning of s. 423 of the Code of Criminal Procedure. Where the Appellate Court reduced a sentence of one month's imprisonment to five days but imposed in addition a fine with two weeks' imprisonment in default : *Held*, that the sentence of the Appellate Court was not illegal. BHAKTHAVATSALU NAIDU *v.* EMPEROR (1905) . I. L. R. 30 Mad. 103

3.—*Penal Code (Act XLV of 1860) s. 62—Criminal breach of trust—Sentence.*—*Held*, that the special sentence provided for by s. 62 of the Indian Penal Code is a sentence which should only be inflicted in rare cases—those in which crimes of an atrocious nature are exposed or in which offences have been committed under aggravated circumstances. *Queen* v. *Mahomed Akhir, 12 W. R. Cr. R. 17*, followed. EMPEROR *v.* AMRIT LAL (1906).
I. L. R. 29 All. 25

SEPARATE SUIT.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 82. I. L. R. 34 Calc. 13

SERVICE-TENURE.

—*Occupancy right—Service-tenure—Under-tenants, if can acquire occupancy—Ejectment—Notice to quit.*—When land was granted to a person as a service-tenure, the condition being that he was to hold it in lieu of services to be performed by him as chowkidar : *Held*, that tenants under him did not acquire occupancy right by holding the land for more than 12 years. *Held*, further, that on the death of the grantee, the grantor was entitled to sue the under-tenants in ejectment without previously serving them with notices to quit. *Ansar Ali Jemadar* v. *C. E. Grey, 2 C. L. J. 403*, referred to. MRITUNJOY ROY CHOWDHRY *v.* KENATULLAH NARYA (1906) . . 11 C. W. N. 46

SESSIONS JUDGE.

——jurisdiction of—

See HIGH COURT, JURISDICTION OF.
I. L. R. 34 Calc. 42

SET-OFF.

See PLEADER, REMUNERATION OF.
I. L. R. 29 All. 649

1.—*Landlord and tenant—Civil Procedure Code (Act XIV of 1882), s. 111—Bengal Tenancy Act (VIII of 1885), s. 67.*—In a suit for rent brought by a landlord the tenant defendant claimed a set-off for costs decreed in his favour in a previous rent suit brought by the *benamidar* of the landlord against the defendant and in which the landlord was made a *pro forma* defendant : *Held*, that the set-off could not be allowed. *Gopi Nath* v. *Bhagwat, I. L. R. 10 Calc. 697; Bharat Prosad* v. *Rameshwar, I. L. R. 30 Calc. 1066*, distinguished. TILUK CHANDRA ROY *v.* JASODA KUMAR ROY (1906).
11 C. W. N. 215

2.—*Debtor can set-off against assignee independent claims against assignor.*—In an action by the assignee of a debt, the debtor-defendant is entitled to set off a debt due to him by the assignor at the date of the assignment, even when the amount claimed to be set off is due under a transaction independent of, and unconnected with, the claim assigned to plaintiff. Such right of set-off will not be open to the defendant, if, by his conduct, he has given up his right to proceed against the assignor personally for the debt. ARUNACHELLAM CHETTI *v.* SUBRAMANIAN CHETTI (1906) . . . I. L. R. 30 Mad. 235

SETTLEMENT OFFICER.

——decision of—

See BENGAL TENANCY ACT, SS. 104 (2), 107.
11 C. W. N. 1028

See RES JUDICATA . 11 C. W. N. 939

SHARE, RELINQUISHMENT OF.

See MAHOMEDAN LAW.
I. L. R. 31 Bom. 271

SHARE-HOLDER.

See PRESIDENCY BANKS ACT.
I. L. R. 31 Bom. 319

SHEBAIT,

——power of, to bind the estate—

See DEBUTTER ESTATE.
I. L. R. 34 Calc. 249

——representation by—

See HINDU LAW.
I. L. R. 34 Calc. 828

See RECEIVER, SALE BY.
11 C. W. N. 489

SIMILARITIES CALCULATED TO DECEIVE.

See TRADE-MARK.
I. L. R. 34 Calc. 495

SIMPLE MORTGAGE.

See SALE IN EXECUTION OF DECREE.
I. L. R. 30 Mad. 500

SLANDER.

See DEFAMATION—LIBEL.
I. L. R. 34 Calc. 48

SLANDER OF TITLE, SUIT FOR.

See TRADE-MARK.
I. L. R. 34 Calc. 495

SMALL CAUSE COURT.

See PROVINCIAL SMALL CAUSE COURTS ACT. . I. L. R. 31 Bom. 314

SMALL CAUSE COURT PROCEEDINGS.

See ARBITRATION ACT.
I. L. R. 31 Bom. 236

SMALL CAUSE COURT SUIT.

See REVIEW. . I. L. R. 29 All. 468

SOLEHNAMAH.

See MORTGAGE.
I. L. R. 34 Calc. 886

——unregistered—

See LANDLORD AND TENANT.
I. L. R. 34 Calc. 456

SOLICITOR, ARRANGEMENT WITH CLIENT WITHOUT INTERVENTION OF.

See ADVOCATE. I. L. R. 34 Calc. 729

SOLICITOR'S COSTS.

—Taxation—Work not ordinarily falling upon Solicitors—Work of meritorious character.—K was the Solicitor for the defendant in a suit brought to obtain probate of the will of one Damji Lakhmichand. The defence set up was that the will was a forgery. Being unable to procure the services of an expert, *K*, after special study for the purpose, himself carefully studied every letter of the alleged will, and despite Counsel's opinion that he had no chance of succeeding, he eventually succeeded in satisfying the trying Judge that the will was a forgery. In his bill for attorney and client's costs, *K* claimed extra payment for the additional and unusual work incurred by him. *Held*, in review of taxation, that *K* was entitled to be separately remunerated for the special work done by him, as it was in fact a charge for work done which would not ordinarily fall upon a Solicitor in the preparation of the brief. DAHIBAI *v.* SOONDERJI (1907).
I. L. R. 31 Bom. 430

SONTHAL PERGANAS.

See GUARDIAN.
I. L. R. 34 Calc. 569

SPECIAL DAMAGE.

See DEFAMATION.

—Damages for loss of reputation caused by defaming a wife—Special damages—Cause of action.—A instituted a suit against *B* for defamation. The words used alleged unchastity on the part of *A*'s wife. *A* alleged (*a*) special damage, (*b*) that the words were defamatory in themselves, (*c*) that he himself was defamed and was therefore entitled to sue. *Held*, that the words used by *B* were defamatory in themselves and did not amount to mere verbal abuse and that, therefore, *A* was entitled to damages without proving special damage. *Girish Chunder Mitter* v. *Jatadhari Sadukhan, I. L. R. 26 Calc. 653*, distinguished. *Ibin Hosein* v. *Haidar, I. L. R. 12 Calc. 109; Trailakya Nath Ghose* v. *Chundra Nath Dutt, I. L. R. 12 Calc. 424; Jogeswar Sarma* v. *Dinaram Sarma, 3 C. L. J. 140*, and *Parvati* v. *Manner, I. L. R. 8 Mad. 175*, referred to. *Held*, also, that the cause of action having arisen in the mofussil the suit was not governed by the rule laid down in *Bhoonimoney Dossee* v. *Natobar Biswas, I. L. R. 28 Calc. 452*. SUKKAN TELI *v.* BIPAD TELI (1906).
I. L. R. 34 Calc. 48

SPECIFIC PERFORMANCE.

See GUARDIAN AND MINOR.
I. L. R. 29 All. 213

See MINOR. . . I. L. R. 34 Calc. 163

—Specific performance, suit for—Pleadings—Practice—Plea in defence—Omission of material term in written contract—Onus—Duty to examine himself—Agreement to take lease on lessor erecting suitable buildings—Time, if essence of contract. —In a suit for specific performance it is important to distinguish between negotiation and contract and to ascertain what the contract is, when and by whom it was made, and who the parties are who are bound by it. Where a party concluded a contract with another party without at any time disclosing that he was acting in the matter as agent for some other person, whether he was really acting as such agent or not, the burden of the contract rested on him, the other party not being concerned with his undisclosed intentions. If the plaintiff's case is clear and the written statement of the defendant raises no defence, the practice in English Courts allows the plaintiff in a suit for specific performance to move for a decree on the written statement being put in, and to get such a decree at once and as a matter of course. It is incumbent on a party who seeks to make out that by inadvertence or mistake an important term has been omitted from a contract drawn up by himself with his own hand and signed by him, to pledge his oath to the truth of his story.

SPECIFIC PERFORMANCE—*concluded.*

specially when the other party comes forward and swears that the suggestion is without foundation. *G. & Co.* agreed to take a lease of certain premises from *H* at a certain rent, upon the latter undertaking to erect new buildings (on a plan which *G. & Co.* approved) to replace existing ones which were to the knowledge of both parties in the occupation of tenants, whom it might take him to eject: *Held*, that time was not made the essence of the contract, though it was clear that in the contemplation of both parties the buildings were to be completed without unreasonable delay. In case of undue delay on the part of *H., G. & Co.* might have made time the essence of the contract by giving notice that they would not hold themselves bound to complete unless the buildings were finished within a specified time, provided the time allowed were such as the Court would hold to be reasonable under the circumstances. It is not incumbent upon a party to give corroborative evidence of statements which are not challenged by the other party. MOULVIE MAHOMED IKRAMULL HUQ *v.* WILKIE (1907).
11 C W. N. 946

SPECIFIC RELIEF ACT (I OF 1877).

—Bank of Bombay—Right of a shareholder to inspect the register of shareholders of the Bank —Object of such inspection—Common law right of a member of a corporation to inspect books of the corporation Presidency Banks Act (XI of 1876), s. 50.— *Held*, that the plaintiff's proper remedy was by way of suit and not *mandamus* under the Specific Relief Act. SULLEMAN SOMJI *v.* THE BANK OF BOMBAY (1907) . . I. L. R. 31 Bom. 319

——s. 23 (c)—

See HINDU LAW. . I. L. R. 29 All. 37

——s. 42—

—Presumptive reversioner, entitled after widow's death, may sue to set aside will of last male holder.— The right of the presumptive reversioner to sue for a declaratory decree under s. 42 of the Specific Relief Act is not restricted to the class of transactions referred to in illustrations (*e*) and (*f*) to that section, *i.e.*, to transactions by the widow herself. Where on the death of the last male owner, leaving a widow, the properties belonging to him are claimed by devisees under a will alleged to have been left by him, the nearest reversioner in existence is entitled to sue for a declaration that the alleged will was invalid and did not bind his reversionary interest. PUTTANNA *v.* RAMAKRISHNA SASTRI (1906).
I. L. R. 30 Mad. 195

——ss. 53, 54, 55—

See INJUNCTION. I. L. R. 34 Calc. 97

SPES SUCCESSIONIS.

— Non-transferable and non-releasable—Mahomedan Law.—The chance of an heir-apparent succeeding to an estate is under Mahomedan Law neither transferable or releasable. It is only by an application of the principle that equity considers that done which ought to be done that such a chance can, if at all, be bound. It was not intended by s. 6 (*a*) of the Transfer of Property Act to establish and perpetuate the distinction between that which according to the phraseology of English lawyers is assignable in law and that which is assignable in equity. In the case of deeds executed by *pardanashin* ladies it is requisite that those who rely on them should satisfy the Court that they had been explained to and understood by those who executed them. *Sudisht Lal* v. *Mussummat Sheobarat Koer, L. R. 8 I. A. 39, 43; Shambati Koeri* v. *Jago Bibi, I. L. R. 29 Calc. 749*, followed. SUMSUDDIN *v.* ABDUL HUSEIN (1906) . I. L. R. 31 Bom. 165

SPLITTING CLAIMS.

See CIVIL PROCEDURE CODE, s. 43.
I. L. R. 29 All. 256

STALL-KEEPERS.

See MARKET. . 11 C. W. N. 1128

STAMP ACT (I OF 1879).

——s. 35—

See PAROL EVIDENCE.
I. L. R. 30 Mad. 386

STAMP ACT (II OF 1899).

See STAMP DUTY.

——s. 2, cl. 15—

—Instrument of partition—Award—An award by an arbitrator directing a partition.—An award began by saying, "We decide as below. The parties should act accordingly." It went on. the defendant "should take into his possession as below after passing a legal release." It added other directions with regard to the action of the defendant, and provided "in connection with whatever is settled to be given to the 'defendant' and to be taken by him, we direct that the 'defendant' should take into his possession the properties and receive and pay money stated above after passing a release on sufficient stamp and getting it registered." *Held*, that the award came within the meaning of the words "an award by an arbitrator directing a partition" within the meaning of s. 2, cl. 15, of the Indian Stamp Act (II of 1899). *Per* BEAMAN, *J.*—The terms of s. 2, cl. 15, of the Indian Stamp Act (II of 1899) provide for all the cases, for parties having divided or agreed to divide, for arbitrators, to whom reference has been made, directing a partition, and last for the Courts effecting a partition. KALIDAS *v.* TRIBHUVANDAS (1906) . . . I. L. R. 31 Bom. 68

STAMP ACT (II OF 1899)—*concluded.*

——s. 23, Sch. I, Arts. 1, 5 cl. (b)—

—Stamp Act (II of 1899), Sch. I, Art. 5, cl. (b) Art. 1 and s. 23—Hatchitta, containing stipulation to pay interest—Acknowledgment or agreement—Stamp duty.—Held, that the document sued upon was not a mere acknowledgment of a debt, inasmuch as it contained a stipulation that the amount should bear interest at a certain rate, and should therefore have been stamped as an agreement or memorandum of agreement with a stamp of 8 annas under cl. (*b*) of Art. 5 of Sch. I of the Stamp Act. *Luxumi Bai* v. *Ganesh Raghu Nath, I. L. R. 25 Bom. 373,* relied on. MULCHAND LALA *v.* KASHIBULLAH BISWAS (1907) . . . . . **11 C. W. N. 1120**

STAMP DUTY.

See HATCHITTA. . **11 C. W. N. 1122**

STATUTES, CONSTRUCTION OF.

—Bombay City Police Act (Bom. Act IV of 1902), ss. 12, 16, 18.—In construing an expression of doubtful import occurring in a statute, the Court may well have regard to considerations outside the language of the Act. EMPEROR *v.* ATMARAM (1907). **I. L. R. 31 Bom. 480**

STAY OF EXECUTION.

See EXECUTION OF DECREE. **I. L. R. 34 Calc. 1037**

STAY OF PROCEEDINGS.

See ARBITRATION ACT, 1899, s. 19. **I. L. R. 34 Calc. 443**

STEP IN AID OF EXECUTION.

See EXECUTION OF DECREE.

STOLEN PROPERTY.

See PENAL CODE, s. 411.

1.—*Penal Code (Act XLV of 1860), s. 411—Possession of stolen property—Joint Hindu family—Liability of head of the family or managing member.*—Stolen property consisting of a considerable quantity of cloth, weighing about five maunds, was discovered on search by the police in a locked room in a house belonging to and inhabited by a joint Hindu family composed of a father, son and grandson. The son was found to be the managing member of the family, and the key of the room in which the stolen property was found was produced by him. The circumstances were such that it was very improbable that the cloth could possibly have been placed where it was found without the connivance of some or all of the members of the family. *Held,* that under the above circumstances the conviction of the managing member of the family under

STOLEN PROPERTY—*concluded.*

s. 411 of the Indian Penal Code was a proper conviction. *Queen-Empress* v. *Sangam Lal, I. L. R. 15 All. 129,* referred to. EMPEROR *v.* BUDH LAL (1907) . . . . **I. L. R. 29 All. 598**

2.—*Evidence Act (I of 1872), s. 114—Presumption—Possession of stolen property.—Held,* that the finding in the possession of a person six months after the commission of a dacoity, of articles stolen in that dacoity, such articles consisting of Jewelry of a very ordinary type and by no means distinctive appearance, is not sufficient to form the basis of a conviction for participation in the dacoity. *Queen-Empress* v. *Burke, I. L. R. 6 All. 224,* and *Ina Sheikh* v. *Queen-Empress, I. L. R. 11 Calc. 160,* referred to. EMPEROR *v.* SUDHAR SINGH (1906). **I. L. R. 29 All. 138**

STRIDHAN.

See HINDU LAW.

—Hindu Law—Succession—Property inherited by daughter from her father—Devolution.—Under the Mitakshara law, as interpreted in this Presidency, the daughter takes an absolute interest in property inherited from her father and on her death, it devolves on her daughter in preference to her son. GULAPPA *v.* TAYAWA (1907). **I. L. R. 31 Bom. 453**

SUB-LEASE.

See BENGAL TENANCY ACT, s. 85, CL. (2). **11 C. W. N. 190**

——by occupancy raiyat—

See LANDLORD AND TENANT. **I. L. R. 34 Calc. 104**

SUB-MORTGAGE.

See MORTGAGE. **I. L. R. 29 All. 385**

SUB-SOIL RIGHTS.

See DIGWARI TENURE. **I. L. R. 34 Calc. 753**

See MINERAL RIGHTS—MINES.

SUBSTITUTION OF NAMES.

See LIMITATION ACT, SCH. II, ART. 175A. **11 C. W. N. 156**

—Appeal, abatement of.—An application for the substitution of the legal representative of a deceased appellant was made more than six months after his death. No notice of the application was given to the respondents and the Judge's attention was apparently not drawn to the fact that the application was made out of time. *Held,* that the *ex parte* order granting the application did not preclude the respondents from urging at the hearing that the appeal should abate, and it was open to the Court

SUBSTITUTION OF NAMES—*concluded*

to go into that question. TRIPURA SUNDARI DEBI *v.* DAKSHINA MOHUN ROY (1906). 11 C. W. N. 698

SUCCESSION.

See HINDU LAW.

See MAHOMEDAN LAW—INHERITANCE. I. L. R. 29 All. 640

See SPES SUCCESSIONS.

—Hindu Law—Murali—Married sisters—Exclusive right claimed by Murali as unmarried daughter to inherit her father's property—Kanya—Maiden—Mitakshara—Vyavaharamayukh—Act XXI of 1850.—A *Vaghya* (male dedicated to the god Khandoba) had three daughters, one of whom was a *Murali* (female dedicated to the god Khandoba) and two married. After the *Vaghya's* death his *Murali* daughter, who lived by prostitution and had children by promiscuous intercourse, claimed her father's property as heir to the exclusion of her sisters under the rule of Hindu Law that an unmarried daughter inherits to her father before his married daughter. The first Court allowed the claim. On appeal by one of the defendants (married daughters) the Judge varied the decree by allowing the plaintiff a third share in the property. On second appeal by the plaintiff the appellate decree was confirmed, there being no appeal or cross-objection by the defendants against that portion of the decree whereby the plaintiff was allowed to share her father's property equally with her married sisters. *Held*, further, that a woman, who in her maiden condition becomes a prostitute, being neither a *kanya* (unmarried) nor a *kulastri* (married), but being at the same time, notwithstanding her prostitution, a qualified heir as held in *Advyapa* v. *Rudrava, I. L. R. 4 Bom. 104*, would be entitled to succeed to her father's property only in default of either married or unmarried daughters. TARA *v.* KRISHNA (1907) . . I. L. R. 31 Bom. 495

SUCCESSION ACT (X OF 1865).

——s. 47—

See CIVIL PROCEDURE CODE. I. L. R. 31 Bom. 413

——s. 48, Illus. (g), (h)—

See WILL, EXECUTION OF. 11 C. W. N. 324

——ss. 56, 57—

See HINDU LAW, WILL. I. L. R. 30 Mad. 369

——s. 78—

—Will—Appointment by general bequest—Power created subsequently to the will—Civil Procedure Code (Act XIV of 1882), s. 527, case stated under.—A general power of appointment may be well exercised by a will executed previously to the creation of the power and that too by a mere residuary gift. DINSHAW SORABJI *v.* DINSHAW SORABJI (1907) . . I. L. R. 31 Bom. 472

——s. 93—

See NATIVE CHRISTIANS. I. L. R. 31 Bom. 25

—Intestate and testamentary succession—Native Christians—Converts from Hindu religion—Joint family—Co-parcenership—Inheritance.—The Indian Succession Act (X of 1865) does not affect rights of co-parcenership as between those to whom it applies. The purpose of that Act was to amend and define the rules of law applicable to intestate and testamentary succession. It is with the *devolution* of rights on intestacy that the Act deals. It does not purport to enlarge the category of heritable property. S. 93 of the Act actually recognises a joint tenancy with the right of survivorship. *Navroji Manockji Wadia* v. *Perozbai, I. L. R. 23 Bom. 80*, referred to. FRANCIS GHOSAL *v.* GABRI GHOSAL (1906) . I. L. R. 31 Bom. 25

SUCCESSION CERTIFICATE ACT (VII OF 1889).

See IMPARTIBLE ESTATE. I. L. R. 30 Mad. 454

SUCCESSION (PROPERTY PROTECTION) ACT (XIX OF 1841).

See HINDU LAW—INHERITANCE. I. L. R. 34 Calc. 929

SUFFICIENT CAUSE.

See DISMISSAL FOR DEFAULT. 11 C. W. N. 430

SUIT.

——against public officer—

See CIVIL PROCEDURE CODE, s. 424. I. L. R. 29 All. 567

——for adjustment of accounts——

See APPEAL. . I. L. R. 29 All. 730

——for compensation——

See ATTACHMENT BEFORE JUDGMENT. I. L. R. 29 All. 615

——for money deposited on current account—

See LIMITATION ACT (XV OF 1877), ss. 19, 20; SCH. II, ARTS. 59 AND 60. I. L. R. 29 All. 773

SUIT—*concluded.*

——for possession of immoveable property—

See LIMITATION. I. L. R. 30 Mad. 308

——for profits—

See LAMBARDAR AND CO-SHARER. I. L. R. 29 All. 287

——for rent in deposit—

See BENGAL TENANCY ACT, S. 149. 11 C. W. N. 380

——for wrongful removal of attached property—

See ATTACHMENT, EFFECT OF. I. L. R. 30 Mad. 207

——to set aside compromise—

See MINOR. . . I. L. R. 34 Calc. 83

——to set aside sale—

See NOTICE. . I. L. R. 34 Calc. 787

SUITS VALUATION ACT (VII OF 1887).

——ss. 8, 11—

—Court Fees Act (VII of 1870), s. 7, paras. iv, v, vi, ix and x, cl. (d)—Suit for a declaration with consequential relief—Valuation for the purpose of jurisdiction and for the fiscal purpose of Court-fees.—Though the valuation of suits for the purpose of jurisdiction is distinct from their valuation for the fiscal purpose of Court-fees, still s. 8 of the Suits Valuation Act (VII of 1887) provides that when in suits other than those referred to in the Court Fees Act (VII of 1870), s. 7, paras. v, vi, ix and x, clause (*d*), *ad valorem* Court-fees are payable, the value as determinable for the computation of Court-fees and the value for the purposes of jurisdiction shall be the same. *Per* RUSSELL, *Ag. C. J.*:—The words "as determinable" in s. 8 of the Suits Valuation Act (VII of 1887) mean, as determinable by the Court which has to try the case. *Per* ASTON, *J.*—S. 4 of the Suits Valuation Act (VII of 1887) seems to indicate that the principle adopted by the Legislature for valuing a suit, mentioned in Sch. II, Art. 17, of the Court Fees Act (VII of 1870), which relates to land or an interest in land, is that the value of such a suit for purposes of jurisdiction shall be governed by the value of the land or interest in land. It being nowhere enacted in the Act that where such value is not determined by rules made under s. 3, the value shall be such as the plaintiff chooses to adopt, I am of opinion that the value must be (where disputed) determined by judicial decision in the suit, such determination being subject to the provisions of s. 11 of the Suits Valuation Act (VII of 1887). DAYARAM *v.* GORDHANDAS (1906). I. L. R. 31 Bom. 73

——s. 9, Rule 2—

See VALUATION OF SUIT. I. L. R. 30 Mad. 18

SUITS VALUATION ACT (VII OF 1887)—*concluded.*

——ss. 11, 21—

See RESTITUTION OF CONJUGAL RIGHTS. I. L. R. 34 Calc. 352

SUMMONS.

—Summons, issue of—Fresh summons issued on the same information—Irregularity in procedure.—Where on an information a summons is issued to the accused, and owing to its disclosing no offence a fresh summons is issued to the accused, without any fresh or supplemental information, the errors omission or irregularity in the fresh summons is not sufficient, under s. 537 of the Criminal Procedure Code, to upset the finding and sentence unless it has in fact occasioned "a failure of justice," that is, unless it has unfairly affected the accused's defence on the merits. EMPEROR *v.* JEEVANJI (1907) . . . . I. L. R. 31 Bom. 611

SUNDAY, DISPOSAL OF SUIT ON.

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), S. 578. I. L. R. 29 All. 562

SUPPLEMENTAL DECREE.

See LIMITATION. I. L. R. 34 Calc. 672

SURCHARGE AND FALSIFICATION.

See PARTNERSHIP, ACCOUNT OF. 11 C. W. N. 776

SURETY.

See LIMITATION ACT. I. L. R. 31 Bom. 50

See PRINCIPAL AND SURETY.

——liability of—

See CIVIL PROCEDURE CODE. I. L. R. 31 Bom. 128

See PRINCIPAL AND SURETY. I. L. R. 30 Mad. 167

—Limitation Act (XV of 1877), Sch. II, Arts. 61, 83—Limitation—Suit on bond to recover money of which a third party has in fact had the benefit—Compromise of suit by heirs of obligor—Suit to recover money paid under compromise.—*U. S.* borrowed money on a bond from *U. R.* The sole obligor of the bond was *U. S.*, but the money was in fact borrowed for the use of, and was paid to, one *M.* From time to time the original bond was renewed, and ultimately *U. R.* sued upon the last bond and obtained a decree for a large sum of money against the heirs of *U. S.* The defendants appealed to the High Court, but, pending the appeal, entered

SURETY—*concluded.*

into a compromise with the plaintiff on the 2nd of January, 1900, whereby they agreed to pay to the plaintiff the sum of R51,000 and costs of the High Court. Upon the 5th of November, 1902, the heirs of *U. S.* paid to the plaintiff decree-holder in pursuance of this compromise R40,000, and on the 17th of July, 1903, they instituted a suit against *M* to recover the amount so paid and their costs. *Held*, that on the facts *U. S.* was not a surety for *M*, but the principal debtor, although the money was borrowed for *M*'s benefit; that the payment made on the 5th of November, 1902, in pursuance of the compromise referred to above, was not gratuitous, and that the heirs of *U. S.* were entitled to recover from *M* the sum of R40,000 so paid with interest, but not the costs of the High Court, in respect of which the suit was barred. *Lewis* v. *Campbell*, *8 C. B. 545*, and *Ram Tuhul Singh* v. *Biseswar Lall Sahoo*, *L. R. 2 I. A. 131*, referred to by KNOX, *A. C. J.* GIRBAJ SINGH *v.* MUL CHAND (1907).

I. L. R. 29 All. 627

SURPLUS SALE PROCEEDS.

See SALE FOR ARREARS OF RENT.

I. L. R. 34 Calc. 724

SURVIVORSHIP.

See HINDU LAW—INHERITANCE.

I. L. R. 34 Calc. 642; 929

SUSPENSION.

See ADVOCATE.

I. L. R. 29 All. 95; L. R. 34 I. A. 41

SWARAJ.

See SEDITION.

SWORD-STICK.

—*"Arms," meaning of—License, necessity of—Indian Arms Act (XI of 1878), ss. 4, 13 and 19 (e).* —A sword-stick is a "sword" within the meaning of the term in s. 4 of the Indian Arms Act. Neither the length, breadth, or the form of the blade of a weapon, nor the handle, afford any certain test of its classification as "arms." Whatever can be used as an instrument of attack or defence, for cutting as well as for thrusting, and is not an ordinary implement for domestic purposes, falls within the purview of the Act. EMPEROR *v.* SATISH CHANDRA ROY (1907) . . . **I. L. R. 34 Calc. 749**

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TAXATION.

—*Solicitor's costs—Work not ordinarily falling upon Solicitors—Work of meritorious character.*—*K* was the Solicitor for the defendant in a suit

TAXATION—*concluded.*

brought to obtain probate of the will of one Damji Lakhmichand. The defence set up was that the will was a forgery. Being unable to procure the services of an expert, *K*, after special study for the purpose, himself carefully studied every letter of the alleged will and despite Counsel's opinion that he had no chance of succeeding, he eventually succeeded in satisfying the trying Judge that the will was a forgery. In his bill for attorney and client's costs, *K* claimed extra payment for the additional and unusual work incurred by him: *Held*, in review of taxation, that *K* was entitled to be separately remunerated for the special work done by him, as it was in fact a charge for work done which would not ordinarily fall upon a solicitor in the preparation of the brief. DAHIBAI *v.* SOONDERJI (1907).

I. L. R. 31 Bom. 430

TEMPLE.

See JURISDICTION.

I. L. R. 30 Mad. 158

——management of—

See ENDOWMENT.

I. L. R. 30 Mad. 138; L. R. 34 I. A. 78

TENANCY.

——period of—

See LEASE . . **I. L. R. 30 Mad. 109**

TENANT AT WILL.

See LANDLORD AND TENANT.

I. L. R. 34 Calc. 57

TENANT FROM YEAR TO YEAR.

See LANDLORD AND TENANT.

I. L. R. 34 Calc. 57

TENDER OF RENT.

See INTEREST.

11 C. W. N. 983; I. L. R. 34 Calc. 34

THIRD-PARTY PROCEDURE.

See PRACTICE. **I. L. R. 31 Bom. 465**

THREAT.

See ADVOCATE. **I. L. R. 34 Calc. 729**

TILED HUT.

—*Calcutta Small Cause Court, jurisdiction of—Execution of decree—Civil Procedure Code*

TILED HUT—*concluded.*

(Act XIV of 1882), ss. 278 to 283.—The Calcutta Small Cause Court has jurisdiction to try the question of title in tiled-hut cases, and in executing a decree of another Court transferred to it has the same power as it possesses in regard to its own decrees. All questions arising in execution of a decree under s. 28 of the Presidency Small Cause Courts Act can be decided by the Small Cause Court. *Deno Nath Batabyal* v. *Nuffer Chunder Nundy. I. L. R. 26 Calc 778,* and *Deno Nath Batabyal* v. *Adhor Chunder Sett, 4 C. W. N. 470,* referred to. GUNAPUTTY ROY AGARWALLA v. THAKURDYE THAKURANI (1907).

I. L. R. 34 Calc. 823

TIME.

——application for extension of—

See ARBITRATION ACT, s. 19

I. L. R. 34 Calc. 443

——if essence of contract—

See SPECIFIC PERFORMANCE.

11 C. W. N. 946

TITLE.

See MORTGAGE. **I. L. R. 29 All. 163**

——denial of—

See LANDLORD AND TENANT.

I. L. R. 34 Calc. 922

—Tiled hut—Presidency Small Cause Courts Act (XV of 1882), ss. 9, 19, 28 - Attachment—Calcutta Small Cause Court, jurisdiction of—Injunction—Civil Procedure Code (Act XIV of 1882) ss. 278 to 283. The Calcutta Small Cause Court has jurisdiction to try the question of title in tiled-hut cases, and in executing a decree of another Court transferred to it has the same power as it possesses in regard to its own decrees. All questions arising in execution of a decree under s. 28 of the Presidency Small Cause Courts Act can be decided by the Small Cause Court. *Deno Nath Batabyal* v. *Nuffer Chunder Nundy, I. L. R. 26 Calc. 778,* and *Deno Nath Batabyal* v. *Audhor Chunder Sett, 4 C. W. N. 470,* referred to. GUNAPUTTY ROY AGARWALLA *v.* THAKURDYE THAKURANI (1907) . . . **I. L. R. 34 Calc. 823**

TOPOGRAPHICAL-SURVEY MAP.

—Evidence Act (1 of 1872) s. 36—Topographical Survey map Admissibility in evidence—Value as evidence—Presumption that entries are correct—Boundary dispute - Jungle land—Duty of Court to settle boundary, when evidence insufficient—Second appeal—Civil Procedure Code (Act XIV of 1882), s. 584—Error of law.—When the question was in which of two adjoining villages—the boundary line between which admittedly corresponded with the boundary line between two pergunnahs—the land in dispute was included: *Held,* that a Topographical Survey map of 1869, in which the boundary line between the two pergunnahs was given, was admissible in evidence under s. 36 of the Evidence Act. When pergunnah boundaries are found entered in such map the presumption is that they were so entered in pursuance of instructions received. S. 36 of the Evidence Act does not require that the authority under which a map is prepared must be authority given by Statute. Assuming that topographical survey maps were not prepared for revenue purposes they are official documents prepared by competent persons and with such publicity and notice to persons interested as to be admissible and valuable evidence of the state of things at the time they were made. They are not conclusive and may be shown to be wrong but in the absence of evidence to the contrary, they may be properly judicially received in evidence as correct when made. *Jagadindra Nath Roy* v. *Secretary of State for India, 7 C. W. N. 193 : I. L. R. 30 Calc. 291,* referred to. In cases of boundary disputes, the fact that no satisfactory evidence as to possession is obtainable does not relieve the Court of the duty of settling the boundary line on the evidence before him. *Lukhi Narain Jagadav* v. *Jadu Nath Deo, I. L. R. 21 Calc. 504,* followed. *Held,* on second appeal, that in the absence of better evidence the lower Appellate Court erred in law in not accepting a Topographical Survey map as evidence of possession at the time the map was made. GAJHOO DAMOR SINGH *v.* KOTWOR JAGATPAL SINGH (1906).

TOPOGRAPHICAL-SURVEY MAP—*concluded.*

11 C. W. N. 230

TORT.

See DAMAGES—SUIT FOR DAMAGES.

TRADE-DESCRIPTION.

See COLLECTOR OF CUSTOMS, POWER OF . . **I. L. R. 34 Calc. 511**

TRADE-MARK.

1.—*Using a false trade mark or selling goods with a counterfeit trade mark—Indian Penal Code (Act XLV of 1860), ss. 482 and 486—Bona fide disputes as to the right to use a trade mark—Jurisdiction of Criminal Court.*—Where the accused had in close proximity to the shop of the complainant, opened a shop from which he was selling rose-water in bottles which were similar to those which contained rose-water sold by the complainant and the accused had applied labels to his bottles which were similar to those used by the complainant, but on closer examination great differences in the labels were discernible: *Held,* that the accused was not guilty under ss. 482 and 486, Indian Penal Code, of using a false trade

TRADE-MARK—*concluded.*

mark or of selling goods to which a counterfeit trade mark was applied. When a *bona fide* dispute exists between the parties as to the right to use a trade mark, action should be taken before a Civil and not before a Criminal Court. *Dowlat Ram* v. *The King-Emperor, I. L. R. 32 Calc. 431,* referred to and approved. SURJA PROSAD *v.* MAHABIR PROSAD (1907) . . . **11 C. W. N. 887**

2.—*Slander of title, suit for—Infringement of trade-mark—Colourable imitation—Malice—Similarities calculated to deceive incautious, ignorant or unwary purchasers.*—*A* made a representation to the Collector of Customs that the trade-mark on certain goods imported by *B* was a colourable imitation of the trade-mark on goods manufactured by *C* and imported by *A*. Thereupon the Customs authorities held an inquiry and detained the goods. *B* brought an action for damages against *A* for slander of title. *Held,* that in order to enable *B* to succeed he must substantiate (*i*) that the statement to the Collector of Customs was untrue in fact, (*ii*) that the statement was made maliciously, *i.e.*, without reasonable and probable cause; (*iii*) that he suffered special damage thereby. *Held,* further, that no action for slander of title lay against A inasmuch as the mark on the goods imported by *B* was a colourable imitation of that on *C*'s goods. A person has a right to use any marks he pleases so long as they are not calculated to mislead the public, and do not infringe anybody's trade-mark. In order to arrive at a conclusion as to whether a trade-mark is a colourable imitation of another or not, the Court may look at the two marks in question with its own powers of forming an opinion, accompanied by the evidence given in the case. It has to consider whether the mark is calculated to deceive incautious, ignorant or unwary purchasers. *Re Christiansen's Trade-mark, 3 R. P. C. 54, Johnston* v. *Orr Ewing, L. R. 7 A. C. 219, Singer Manufacturing Company* v. *Loog, L. R. 8 A. C. 15,* followed. NEMI CHAND *v.* C. W. WALLACE (1907) . . **I. L. R. 34 Calc. 495**

TRANSFER.

—*Criminal Procedure Code, s. 526—Transfer of criminal case—Magistrate having prejudged accused in other case, sufficient ground for transfer.*—Where the Magistrate has, in a counter case brought by the accused on the same facts, prejudged the guilt of the accused, the High Court will, in the interest of justice, transfer the case against the accused to some other Court. RANGASAMI GOUNDAN *v.* EMPEROR (1906). **I. L. R. 30 Mad. 233**

——by tenant—

See LANDLORD AND TENANT.

——by Road-Cess Department—

—*Transfer by unregistered document—Delivery of possession—Transfer of Property Act (IV of 1882), s. 54.*—A certain plot of land being transferred by the Road Cess Department to the Public Works Irrigation Department for a sum less than one hundred rupees without any registered instrument, the Secretary of State for India in Council instituted a suit against the defendants for recovery of possession of the said lands. Upon an objection taken that the plaintiff acquired no title to the property, as the transfer, upon which he relied, was in contravention of the provisions of s. 54 of the Transfer of Property Act: *Held,* that inasmuch as the transfer was not made by a registered instrument, and as also the plaintiff had been in occupation from before the date of the transfer and there was not any delivery of possession within the meaning of the provisions of s. 54 of the Transfer of Property Act, the plaintiff acquired no title by the said transfer. *Gunga Narain Gope* v. *Kali Churn Goala, I. L. R. 22 Calc. 179,* distinguished. SIBENDRAPADA BANERJEE *v.* SECRETARY OF STATE FOR INDIA (1907) . . **I. L. R. 34 Calc. 207**

TRANSFER.

——of criminal cases—

1.—*Criminal Procedure Code (Act V of 1898), s. 528 Omission to state grounds.*—It is incumbent on the Court making a transfer under s. 528 to record its reasons therefor, but the omission to do so is not a ground for setting aside the order where it has not prejudiced the accused. PRAKAS CHUNDER DUTT *v.* EMPEROR (1907) . **I. L. R. 34 Calc. 918**

2.—*Criminal Procedure Code (Act V of 1898), s. 526—Rule nisi for transfer, issue of—Communication by vakil—Examining witnesses after communication—Reasonable apprehension that fair trial would not be had.*—Where on an application being made by the accused to the trying Magistrate for time to enable him to move the High Court for transfer of the case pending against him, the Magistrate did not pass an order at once but examined 13 witnesses for the prosecution, and then passed an order allowing 14 days' time and where after the fact of the issue of a rule by the High Court on the application for transfer had been communicated by a telegram from a vakil of the High Court, the Magistrate instead of postponing the case at once examined four witnesses and then made an order for adjournment: *Held,* that these proceedings on the part of the Magistrate were sufficient to justify the transfer of the case from his file. WAHED MOLLA *v.* SHAIK BASARADDI (1906) . . . . **11 C. W. N. 507**

——of decree for execution—

See EXECUTION OF DECREE.

——power of, by Magistrates—

See CATTLE TRESPASS ACT, s. 20, SCH. II. **I. L. R. 34 Calc. 926**

TRANSFER OF PROPERTY ACT (IV OF 1882).

See MORTGAGE.

——s. 6 (a)—

See MAHOMEDAN LAW.
I. L. R. 31 Bom. 165

1.—*Spes successionis—Non-transferable and non-releasable – Deeds executed by pardanashin lady —Burden of proof—Mahomedan Law.*—It was not intended by s. 6 (*a*) of the Transfer of Property Act to establish and perpetuate the distinction between that which according to the phraseology of English lawyers is assignable in law and that which is assignable in equity. SUMSUDDIN *v.* ABDUL HUSEIN (1906) . . I. L. R. 31 Bom. 165

2.—*Hindu Law, Reversioner—Renunciation of reversionary right is a transfer of an expectancy and as such is void—Limitation Act (XV of 1877), sch. II, Art. 127—Time does not run until shares excluded.*—*A*, a member of an undivided Hindu family, was adopted by one *V*, a widow. His adoption was declared invalid in 1883. He consented to reside with *V*. and in 1886 orally renounced his right to a share in the property belonging to his natural family in consideration of his co-sharers who were also the reversioners of *V* renouncing the reversionary right in the properties held by *V* as the heiress of her husband. In a suit brought by *A* in 1901 for partition of the property in his natural family: *Held*, that *A*'s residing with *S* from 1883 to 1896 did not amount to an abandonment by *A* of his right to partition or to an exclusion of *A* to his knowledge, from the enjoyment of his family property and that his right to partition was not barred by Article 127, Schedule II of the Limitation Act: *Held, further*, that the renunciation of their reversionary rights by the reversioners amounted to a transfer of an expectancy and was a nullity under s. 6 (*a*) of the Transfer of Property Act, and that such renunciation cannot be a good consideration for a contract. DHOORJETI SUBBAYYA *v.* DHOORJETI VENKAYYA (1906).
I. L. R. 30 Mad. 201

3.—*Transfer of bare expectancy by mortgagor or by consent decree void—Res judicata in execution proceedings—Order passed after notice no res judicata when notice silent as to prayers claimed—Receiver, continuation of, by Appellate Court—Amendment of execution petition, power of Court to allow.* – *A*, the owner of an impartible and inalienable zamindari, which passed on the death of the owner for the time being who had only a life estate, to the senior male member of the family mortgaged it to *B* in 1892 without possession. Four male members of the family *C*, *D*, *E*, *F*, who were in the line of heirs joined *A* in executing the mortgage. Subsequently some usufructuary mortgages were executed to *B*. and *B* was in possession of the zamindari. In 1894, Original Suit No. 43 of 1894 was brought by *B* against *A*, *C*, *D*, *E*, *F*, and others to recover the amount due under the mortgage of 1892. A consent decree was passed making defendants *A*, *C*, *D*, *E*, *F*, liable for the amount and directing that in case the amount was not recovered in the life-time of *A*, it should be recovered from the other defendants when they succeeded to the estate and the zamindari was made liable for the decree amount. *A* died in 1904. He was succeeded by one not a party to the suit and on the latter's death in 1905, *C* succeeded as zamindar. In 1899 and 1903 two applications for execution by sale of the *whole zamindari* were put in by *B* and were granted after notice served on *C*. The notices, however, only stated that application was made for execution of the decree but the reliefs asked for were not stated. *A* applied again for execution in 1905. The prayer was for sale of the zamindari and for the appointment of a Receiver, but the prayer for sale was given up at the trial. *C* raised various objections which were overruled and the Sub-Judge appointed a Receiver to take charge of the zamindari and its appurtenances. *C* appealed:—*Held*, on appeal, that *C* in 1892 was not a dormant co-owner with *A* in the zamindari and that the mortgage by *C* of his right in the zamindari in 1892 was a transfer of a bare expectancy and was a nullity under s. 6 (*a*) of the Transfer of Property Act. The prohibition in s. 6 (*a*) of the Transfer of Property Act is based on principles of public policy, and the Court cannot allow such transactions to be effected by a consent decree. *Lakshmanaswami Naidu* v. *Rengamma, I. L. R 26 Mad. 31*, referred to. The principles of equity, on which English Courts grant relief in such cases when the property actually vests, cannot be given effect to in the face of express prohibition contained in s. 6 (*a*) of the Transfer of Property Act. An order passed in execution proceedings will be *res judicata* only when the notice gives sufficient intimation of the relief prayed for. *Narayana Pattar* v. *Gopalakrishna Pattar, I. L. R. 28 Mad. 355*, followed. *Held*, further, that as the Receiver was validly appointed on the ground that the property was the subject-matter of the suit, the Appellate Court had jurisdiction to maintain him as a means of realising the amount from the judgment-debtor personally and the property must be considered under attachment, though not attached under s. 274 of the Code of Civil Procedure. Amounts realised by a usufructuary mortgagee in possession after decree for sale cannot be applied in satisfaction of the decree amount unless certified under s. 258 of the Code of Civil Procedure. *Held*, also, that under the circumstances of the case the decree-holder may be considered to have applied for the enforcement of the decree against *C* personally and the order of the lower Court upheld on that ground. Amendment of petition by inserting a prayer for execution against *C* personally allowed. RAMASAMI NAIK *v.* RAMASAMI CHETTI (1906). I. L. R. 30 Mad. 255

——s. 6 (d)—

See MORTGAGEE . I. L. R. 29 All. 640

——s. 10—

See MARRIED WOMAN, PROPERTY OF.
I. L. R. 30 Mad. 378

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

——s. 41—

See GUARDIAN. I. L. R. 29 All. 292

——s. 51—

—Equitable principle embodied in s. 51 not opposed to Mahomedan Law—Mahomedan Law—De facto guardian, power of, over minor's property.—Under Mahomedan Law, a sale by the mother as *de facto* guardian of her minor son, of the property of such minor is not binding on him. The rule of equity embodied in s. 51 of the Transfer of Property Act is not opposed to any principle of Mahomedan Law and s. 2 does not preclude its application in cases decided under the Mahomedan Law. What constitutes good faith within the meaning of s. 51 is a question of fact and a person may act in good faith, though he acts under a mistake of Law. DURGOZI ROW v. FAKEER SAHIB (1906). I. L. R. 30 Mad. 197

——s. 52—

See LIS PENDENS. I. L. R. 29 All. 339; I. L. R. 31 Bom. 393

—Civil Procedure Code (Act XIV of 1882)—Contentious suit—Active prosecution—Non-service of the summons on the defendant—Transfer of property by the defendant—Lis pendens.—S. 52 of the Transfer of Property Act (IV of 1882) imposes two conditions—(*a*) the existence of a contentious suit and (*b*) that the transfer should be during its active prosecution in a Court of the kind described in the section. *Semble*: Every real suit (as distinguished from a collusive one) to which the Civil Procedure Code (Act XIV of 1882) applies, is *primâ facie* contentious According to the Civil Procedure Code the essentials of a suit are—(1) opposing parties. (2) a subject in dispute, (3) a cause of action, and (4) a demand of relief. If there is no inaction on the plaintiff's part, the suit would be contentious, notwithstanding the fact that the service of the summons could not be effected on the defendant. A suit cannot be said to be non-contentious merely because the decree therein is passed *ex parte*. *Annamalai Chettiar* v. *Malayandi Appaya Naik*, *I. L. R. 29 Mad. 426*, followed. *Upendra Chandra Singh* v. *Mohri Lal Marwari*. *I. L.R. 31 Calc. 745*, not followed. The defendant having transferred his property to another during the active prosecution of the suit but before the service of summons: *Held* that the doctrine of *lis pendens* applied. *Radhasyam Mohapattra* v. *Sibu Panda*, *I. L. R. 15 Calc. 647*; *Abboy* v. *Annamalai*, *I. L. R. 12 Mad. 180*; *Parsotam Saran* v. *Sanehi Lal*, *I.L.R. 21 All. 408*; *Upendra Chandra Singh* v. *Mohri Lal Marwari*, *I. L. R. 31 Calc. 745*, not followed. *Jogendra Chunder Ghose* v. *Fulkumari Dassi*, *I. L. R. 27 Calc. 77*, and *Annamalai Chettiar* v. *Malayandi Appaya Naik*, *I. L. R. 29 Mad. 426*, approved. *Per* BEAMAN, *J.*—I am clearly of opinion that from the moment a suit of any sort whatever, except only collusive suits, is filed, it is potentially contentious. So-called friendly suits, I think, certainly are. For the purpose then of conditioning the rule of *lis pendens*, I would say that the filing of any but a collusive suit is enough. KRISHNAPPA *v.* SHIVAPPA (1907) . . I. L. R. 31 Bom. 393

——s. 53—

See FRAUDULENT CONVEYANCE. I. L. R. 34 Calc. 999

See FRAUDULENT TRANSFER. I. L. R. 30 Mad. 6

—Fraudulent transfer—Suit to set aside fraudulent conveyance—Frame of suit—Appeal.—A suit under s. 53 of the Transfer of Property Act to obtain a declaration that a conveyance is voidable at the instance of the creditors of the transferor must be brought by or on behalf of all the creditors, and the suit unless so framed would not be maintainable. *Burjorji Dorabji Patel* v. *Dhunbai*, *I. L. R. 16 Bom. 1*; *Ishvar Timappa Hegde* v. *Devar Venkappa*, *I. L. R. 27 Bom. 146*; *Chatterput Singh* v. *Maharaj Bahadur*, *I. L. R. 32 Calc. 198*, and *Reese River Silver Mining Co.* v *Atwell*. *I. R. 7 Eq. 347*, referred to. But a suit cannot be dismissed on this ground, if the objection is taken for the first time in appeal. HAKIM LAL *v.* MOOSHAHAB SAHU (1907). I. L. R. 34 Calc. 999

—— s. 54—

—Transfer of property by the Road Cess Department to the Public Works Irrigation Department—Property valued at less than 100 rupees—Delivery of possession.—A certain plot of land being transferred by the Road Cess Department to the Public Works Irrigation Department for a sum less than one hundred rupees without any registered instrument, the Secretary of State for India in Council instituted a suit against the defendants for recovery of possession of the said lands. Upon an objection taken that the plaintiff acquired no title to the property, as the transfer, upon which he relied, was in contravention of the provisions of s. 54 of the Transfer of Property Act: *Held* that, inasmuch as the transfer was not made by a registered instrument, and as also the plaintiff had been in occupation from before date of the transfer and there was not any delivery of possession within the meaning of the provisions of s. 54 of the Transfer of Property Act, the plaintiff acquired no title by the said transfer. *Gunga Narain Gope* v. *Kali Charan Goala*, *I. L. R. 22 Calc. 179*, distinguished. SIBENDRAPADA BANERJEE *v.* SECRETARY OF STATE FOR INDIA (1907) . . . . I. L. R. 34 Calc. 207

——s. 55—

See LIEN. . I. L. R. 30 Mad. 524

——ss. 55, 59—

See COVENANT, CONSTRUCTION OF. I. L. R. 30 Mad. 284

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

——ss. 59, 98—

See KANOM. . I. L. R. 30 Mad. 300

——s. 60—

—Mortgage—Redemption—Effect of puchase by mortgagees of part of the mortgaged property. —When the integrity of a mortgage has been broken up upon the purchase by the mortgagees of the equity of redemption in a portion of the mortgaged property, the right of redemption of each of the several mortgagors is confined to his own interest in the mortgaged property; he cannot redeem the remainder of the mortgaged property against the wishes of the mortgagees. *Nawab Azimut Ali Khan* v. *Jowahir Singh, 13 Moo. I. A. 404; Kuray Mal* v. *Puran Mal, I. L. R. 2 All. 565,* and *Girish Chander Dey* v. *Juramoni De, 5 C. W. N. 83,* followed. MUNSHI v. DAULAT (1906).

I. L. R. 29 All. 262

——ss. 62, 63—

See MORTGAGE REDEMPTION.

I. L. R. 29 All. 471

—— ss. 62, 83—

—Civil Procedure Code (Act XIV of 1882), ss. 13, 43—Res judicata—Usufructuary mortgage —Suit for possession of mortgaged property—Tender of mortgage-money—Deposit in Court—Redemption decree Second suit to recover mesne profits from the date of deposit to the date of recovery of possession of mortgaged property—Position of mortgagee in possession after the tender of deposit of mortgage-money.—In 1884 the plaintiffs executed a usufructuary mortgage in favour of the defendant and placed him in possession of the property In 1901, the plaintiffs tendered the amount of the principal to the defendant, but it was not accepted. The plaintiffs in consequence filed a suit, under s. 62 of the Transfer of Property Act (IV of 1882), to recover possession of the mortgaged property, and at the same time under s. 83 of the Act deposited the amount of the principal in Court as the amount payable on the mortgage. The Court passed a decree for possession. In 1904 the plaintiffs filed another suit to recover mesne profits from the defendant from the date of the deposit to the date when he recovered possession of the mortgaged property from the defendant in execution of the redemption decree in the previous suit. The claim was disallowed on the ground of *res judicata. Held,* that the plaintiffs having failed to ask for mesne profits in the previous suit, his present claim was barred either under s. 13 or 43 of the Civil Procedure Code (Act XIV of 1882). The profits derived by a mortgagee after a proper tender made or after the amount due has been deposited in Court are profits for which he has to account to the mortgagor in virtue of a liability tacked on, so to say, by the statute to the mortgage contract; and as such a claim to them by the mortgagor is one arising from and connected with his right to redeem or recover possession of the property. From the date of the tender or of the deposit, as the case may be, the mortgagee continues as mortgagee but with a statutory liability to account for the profits received by him from that date. He is not then a mere trespasser but a mortgagee still, holding the property as a kind of trustee for the mortgagor and as such accountable to the latter for the profits. RUKHMINIBAI v. VENKATESH (1907).

I. L. R. 31 Bom. 527

——s. 65—

—Purchaser of equity of redemption from mortgagor not bound to pay public charges and is not when he purchases the lands at a revenue sale a constructive trustee under s. 90 of the Trusts Act—Mortgage, lien of property paying prior, extinguished when part of mortgaged property is purchased for such amount—Sale for revenue—Trusts Act (II of 1882), s. 90.—Where a person paying off a prior mortgage, purchases a portion of the mortgaged properties, in consideration of the amount so paid to him, the lien acquired by such payment is extinguished and cannot be used as a shield against a subsequent mortgagee by such purchaser. The assignee of a mortgage decree purchasing a portion of the mortgaged properties, acquires over such portion a lien for only a proportionate share of the mortgage amount. The implied covenant on the part of the mortgagor, under s. 65 of the Transfer of Property Act, to pay the public charges on the properties mortgaged does not extend to the purchaser of the equity of redemption from the mortgagor. Such purchaser in omitting to pay such charges does not fail to discharge any obligation owing from him to a mortgagee of the said properties, and in purchasing such properties at a revenue sale for non-payment of such charges, he does not gain an advantage as qualified owner in derogation of the rights of the mortgagee or other persons interested in the property so as to constitute him a constructive trustee for them under s. 90 of the Trusts Act. RENGA SRINIVASA CHARI v. GNANAPRAKASA MUDALIAR (1906).

I. L. R. 30 Mad. 67

——ss. 67, 96, 97—

See MORTGAGE.

I. L. R. 30 Mad. 408

—— s. 69—

See VENDOR AND PURCHASER.

I. L. R. 31 Bom. 566

——s. 82—

—Purchase by the mortgagee of some of the mortgaged properties in execution of another decree, effect of—Contribution—Execution proceeding—Separate suit —If by reason of it being necessary to sell the remaining share in the mortgaged

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

properties of the judgment-debtor, any equity should arise between the decree-holder and other persons interested in the properties mortgaged, to have the decretal money distributed over the whole property mentioned in the decree, that equity must be enforced by an independent suit. *Nafar Chunder Mundul* v. *Baikanto Nath Roy, 4 C. L. R. 15*, referred to. A mortgagee having purchased the equity of redemption in a part of the mortgaged property previously applied subsequently to enforce his decree against the remaining mortgaged properties without bringing the property purchased into hotchpot, and without making all the persons interested in the said properties, parties. On objections being taken that the decree-holder was not entitled to do so, and that, even if he could do so, the decretal amount now sought to be recovered should be apportioned between the properties purchased by him and the remaining properties: *Held*, that the decree-holder was entitled to execute his decree against any of his mortgaged properties: *Held*, further, that the question of apportionment must be tried and disposed of in a separate litigation, and could not properly be considered and decided in execution proceedings. *Harendra Kumar Guha* v. *Din Dayal Saha, 4 C. L. J. 195*, dissented from. AMIN CHAND *v.* BUKSHI SHEO PERSHAD SINGH (1906). **I. L. R. 34 Calc. 13**

——s. 85—

See MORTGAGE. . **11 C. W. N. 1078**

—Mortgagee holding two mortgages on same property and who has sued on the first mortgage and sold the property without mentioning the second mortgage, cannot sue on his second mortgage.—A mortgagee who is made a defendant under s. 85 of the Transfer of Property Act and who omits to set up a mortgage is barred from suing on such mortgage when in consequence of his omission the property is ordered to be sold free from the mortgage which had not been pleaded. *Sri Gopal* v. *Pirthi Singh, I. L. R. 24 All. 429*, referred to. A party holding two mortgages on the same property and suing on the first mortgage alone, is in respect of the second mortgage a party to the suit under s. 85 of the Transfer of Property Act; and if he omits to mention, his second mortgage and the property is ordered to be sold free of such mortgage, he cannot afterwards sue to enforce his second mortgage against such property. *Sundar Singh* v. *Bholu, I. L. R. 20 All. 322*, dissented from. *Dorasamy* v. *Venkatasesha Aiyar, I. L. R. 25 Mad. 108*, followed. NATTU KRISHNAMA CHARIAR *v.* ANNANGARA CHARIAR (1907) . . **I. L. R. 30 Mad. 353**

——ss. 86, 88—

See DECREE. **I. L. R. 34 Calc. 157**

See INTEREST. **I. L. R. 29 All. 322**

——ss. 88, 90—

1.—*Execution of decree—Decree to be executed a combination of a decree for sale and a personal decree.*—Where a decree in a suit for sale of hypothecated property is both a decree for sale of the property under s. 88 and a personal decree under s. 90 of the Transfer of Property Act, 1882, there is no need for the decree-holder to apply for a separate decree under s. 90, and if he does so and his application is rejected, this will not operate as a bar to his executing the decree against the judgment-debtor personally. SADHO SINGH *v.* THE MAHARAJA OF BENARES (1906) . . **I. L. R. 29 All. 12**

2.—*Mortgage decree under s. 88 cannot impose personal liability for costs—Such liability should be enforced under s. 90.*—It will be contrary to the scheme of the Transfer of Property Act and to the practice of the English Courts of Equity to make the mortgagor personally liable for costs in any case before the sale-proceeds have proved insufficient to satisfy the mortgage claim. *Sharples* v. *Adams, 32 Beav. 213*, referred to. *Liverpool Marine Credit Co.* v. *Wilson, L. R. 7 Ch. 507*, referred to. A decree under s. 88 of the Transfer of Property Act must not order the defendants personally to pay the costs. It may contain a declaration of the personal liability of defendant for principal or costs, but such a declaration is not part of the usual form of decree under the Transfer of Property Act, and is enforceable only under s. 90. The words "the amount due on the mortgage for the time being" in s. 90 must be taken to include costs. *Magbul Fatima* v. *Lalta Prasad, I. L. R. 20 All. 523*, referred to. KAMALAMMA *v.* KOMANDUR NARASIMHA CHARLU (1907) . **I. L. R. 30 Mad. 464**

——s. 89—

See MORTGAGE. **I. L. R. 34 Calc. 886**

——ss. 89, 92—

See RES JUDICATA. **I. L. R. 34 Calc. 223**

——s. 90—

See LIMITATION. **I. L. R. 34 Calc. 672**

1.—*Mortgage—Mortgaged property totally incapable of being sold—Decree under s. 90 not obtainable.*—Where property mortgaged was property which the mortgagee could by no possibility bring to sale in execution of a decree under his mortgage, it was *held* that no decree under s. 90 of the Transfer of Property Act, 1882, could be granted. *Kedar Nath* v. *Chandumal, I. L. R. 26 All. 25*, distinguished. PIRBHU NARAIN SINGH *v.* BALDEO MISRA (1906) . **I. L. R. 29 All. 260**

2.—*Decree for sale on a mortgage—Property ordered to be sold in part not susceptible of sale—Abandonment of claim to sell such part.*—*Held*, that on the true construction of the provisions of the Transfer of Property Act, 1882, a mortgagee is entitled at any stage to abandon his claim against any portion of the mortgaged property and then obtain a decree under s. 90 for any balance due after crediting the amount realized by the sale of the property actually sold *Muhammad Akbar* v. *Munshi*

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

Ram, Weekly Notes, 1899, 208, distinguished. *Sheo Prasad* v. *Behari Lal, I. L. R. 25 All. 79; Kedar Nath* v. *Chandu Mal, I. L. R. 26 All. 25,* and *Ghafur Hasan Khan* v. *Muhammad Kefayatullah Khan, I. L. R. 28 All. 19,* referred to. PIRBHU NARAIN SINGH *v.* AMIR SINGH (1907). I. L. R. 29 All. 369

3.—*Civil Procedure Code (Act XIV of 1882) s. 235 (g) Decree on mortgage - Direction for sale and recovery of deficit personally—Reservation of liberty to apply for personal decree—Personal decree contingent on the ascertainment of balance —Attachment—Suit for declaration of ownership and removal of attachment.*—A decree on a mortgage directed that on default of payment of the mortgage-money within six months the property should be sold, and, if the sale-proceeds were insufficient to pay the amount due on the mortgage, the balance was to be recovered from the defendant-mortgagor personally. *Held,* that the decree was passed in disregard of the provisions of s. 90 of the Transfer of Property Act (IV of 1882) in so far as it directed personal payment by the mortgagor. The words of the section show that this direction should have been in a supplemental decree to be passed when the net proceeds of the sale should be found to be insufficient. The original decree should merely have reserved to the plaintiff liberty to apply for a decree under s. 90. A minor son of the mortgagor having brought a suit for a declaration of his ownership of an undivided half of a house and removal of an attachment which was levied under the personal clause of the aforesaid decree, before the birth of the minor : *Held,* that the plaintiff was entitled to a direction that the house to the extent of the plaintiff's interest therein be released from attachment. *Held,* further, that the personal decree was contingent on the ascertainment of the balance and only became operative and capable of execution when the balance was ascertained. Until then the amount of the debt, for which alone the personal decree was passed, could not be stated as required by s. 235 (*g*) of the Civil Procedure Code (Act XIV of 1882). The balance of the debt being unascertained, the minor was entitled to establish any circumstance which affected the validity of the attachment against his interest in the property. DAMODAR *v.* VYANKU (1906). I. L. R. 31 Bom. 244

——s. 91—

See REDEMPTION. . 11 C. W. N. 495

—*Mortgage - Redemption—Who may redeem—Perpetual lessee.*—In a suit for redemption of a mortgage the plaintiff was a perpetual lessee of the mortgaged premises from the mortgagor, holding under a lease granted upon payment of a premium of Rs00, with a yearly rental of R40 odd. By the terms of the lease the lessee was not liable to be ejected, even for non-payment of rent, while if the title of the lessors proved defective, the lessee was entitled to a refund of the premium. *Held,* that the lessee was under the above circumstances entitled to redeem. *Paya Matathil Appu* v. *Kovamel Amina, I. L. R. 19 Mad. 151; Radha Pershad Misser* v. *Monohur Das, I. L. R. 6 Calc. 317; Jugal Kissore Lal Singh Deo* v. *Kartic Chundra Chottopadhya, I. L. R. 21 Calc. 116; Kasumunnissa Bibee,* v. *Nilratna Bose, I. L. R. 8 Calc. 79; Girish Chundra Dey* v. *Juramoni De, 5 C. W. N. 83;* and *Ram Subhag* v. *Nar Singh, I. L. R. 27 All. 472,* referred to. RAGHUNANDAN PRASAD *v.* AMBIKA SINGH (1907) . . . I. L. R. 29 All. 679

——ss. 92, 93—

—*Usufructuary mortgage—Redemption—Form of decree in a suit for redemption.*—An order declaring that the plaintiff's right to redeem shall be extinguished upon non-payment within the time limited by a decree for redemption of the amount found to be due is not a proper order when the mortgage sought to be redeemed is a usufructuary mortgage. Nevertheless where such an order has been made and the decretal money has not been paid within the time limited and the decree has been allowed to become final the plaintiff cannot thereafter bring a second suit for redemption. *Sitaram* v. *Madho Lal, I. L. R. 24 All. 44,* referred to. LACHMAN SINGH *v.* MADSUDAN (1907). I. L. R. 29 All. 481

——s. 99—

See MORTGAGE—REDEMPTION. I. L. R. 30 Mad. 362

See REDEMPTION, RIGHT OF. I. L. R. 30 Mad. 313

See SALE IN EXECUTION OF DECREE. 11 C. W. N. 1011

——s. 99—

—*Money decree obtained by mortgagee against mortgagor—Transfer of the decree—Assignee bound by the provisions of s. 99.*—The transferee of a money decree obtained by a mortgagee against his mortgagor is bound by the restriction imposed upon the mortgagee by s. 99 of the Transfer of Property Act (IV of 1832). He can attach the mortgaged property, but he is not entitled to bring it to sale otherwise than by instituting a suit under s. 67 of the Act. CHHAGAN *v.* LAKSHMAN (1907). I. L. R. 31 Bom. 462

——ss. 105, 107—

See LEASE. . I. L. R. 30 Mad. 322

——s. 106—

See LEASE. . I. L. R. 30 Mad. 109

——ss. 106, 107—

See LEASE. . . 11 C. W. N. 1124

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

——s. 108—

See MINERAL RIGHTS.
I. L. R. 34 Calc. 358

——s. 108 (j)—

See LEASE, ASSIGNMENT OF.
I. L. R. 30 Mad. 410

——s. 118—

See EXCHANGE. . 11 C. W. N. 342

——s. 119—

—*Breach of condition constituting cause of action under s. 119 of the Transfer of Property Act, arises at date of final decree on appeal—Limitation Act (XV of 1877), s. 10—Does not apply in suits against assignees for valuable consideration.*—*A*, the trustee of a temple, exchanged certain temple lands with *B* and obtained certain lands from *B* in exchange. *C* brought a suit against *A* to recover the land obtained by *A* in exchange from *B* and possession was decreed in favour of *C*, and *A* was deprived of possession in execution of the decree on 18th December, 1890. *A* preferred appeals successively to the District Court and to the High Court and the decree was confirmed on second appeal on the 23rd February, 1892. On the 22nd February 1904, *A*'s successor brought a suit against *B* to recover the lands got by *B* from *A*:—*Held*, that the dispossession of plaintiffs which entitled him to bring a suit under s. 119 of the Transfer of Property Act must be held to have taken place only when the decree for possession against him was confirmed on second appeal by the High Court. *Held*, further, that s. 10 of the Limitation Act did not apply to the suit. The section proceeds upon the well-known distinction between transfers for valuable consideration and voluntary transfers, and the transfer in this case is not the less a transfer for valuable consideration, because the consideration subsequently failed. Section 10 does not deprive transferees for valuable consideration of the benefits of the statute. *Bassu Kuar* v. *Dhum Singh*, *I. L. R. 11 All. 47*, followed. *Hanuman Kamat* v. *Hanuman Mandur*, *I. L. R. 19 Calc. 123*, *Tulsiram* v. *Murlidhar*, *I. L. R. 26 Bom. 750*, distinguished. RAJAGOPALAN v. KASIVASI SOMASUNDARA THAMBIRAN (1907) . . . I. L. R. 30 Mad. 316

——s. 123—

—*Gift—Registered deed of gift unaccompanied by delivery of possession.*—A registered deed of gift, unaccompanied by delivery of possession, is valid by virtue of the provisions of s. 123 of the Transfer of Property Act. *Dharmodas Dass* v. *Nistarini Dasi*, *I. L. R. 14 Calc. 446*; *Bai Rambai* v. *Bai Mani*, *I. L. R. 23 Bom. 234*, and *Phul Chand* v. *Lakkhu*, *I. L. R. 25 All. 358*, followed. BALBHADRA v. BHOWANI (1907).
I. L. R. 34 Calc. 853

TRANSFER OF PROPERTY ACT (IV OF 1882)—*concluded.*

——s. 130—

See ACTIONABLE CLAIM.
I. L. R. 30 Mad. 235; I. L. R. 34 Calc. 289

See ASSIGNMENT OF DEBT.
I. L. R. 30 Mad. 75

——Chapter IV—

See MORTGAGE. I. L. R. 29 All. 385

TRANSFER OF TENURE.

——recognition of, by landlord—

See LANDLORD AND TENANT.
I. L. R. 34 Calc. 902

TREES.

See BHAGDARI AND NARWADARI ACT.
I. L. R. 31 Bom. 183

See LAND ACQUISITION ACT, ss. 3 (*a*), 23.
I. L. R. 30 Mad. 151

See LANDLORD AND TENANT.
I. L. R. 29 All. 484

TRUST.

See EXPRESS TRUST.
I. L. R. 31 Bom. 418

TRUSTEE.

See WILL. . I. L. R. 31 Bom. 472

——removal of—

See ENDOWMENT. I. L. R. 34 Calc. 587

TRUSTS ACT (II OF 1882).

——ss. 53, 36—

—*Trustee—Transactions entered into by trustee for his own benefit—"Unless otherwise provided"—Equity in favour of a person paying off a subsisting charge on property—Appointment of cestui que trust as trustee.*—S. 53 of the Indian Trusts Act (II of 1882) strikes at transactions entered into by a trustee for his own profit after he has accepted the trust and while he is performing the duties of the office. It does not render void a mortgage in favour of a person created before he becomes trustee of the property by the deed of trust itself as a condition of the trust imposed by the settlor. The expression "unless otherwise provided" used in s. 36 of the Indian Trusts Act (II of 1882), means, unless otherwise provided by the instrument of trust. Where there is a subsisting charge on certain property paid off by the person in possession, it is equitable that when the plaintiff reclaims the estate, credit should be given to that person for the payment of the mortgage which the plaintiff

TRUSTS ACT (II OF 1882)—*concluded.*

would have had to meet. *Mahomed Shumsool* v. *Shewukram*, *L. R. 2 I. A. 17*; *Lomba Gumaji* v. *Vishwanath Amrit*, (*1893*) *P. J. 30*; and *Ranu* v. *Kedu*, (*1894*) *P. J 39*, followed. There is no provision in the Indian Trusts Act (II of 1882) that a *cestui que trust* shall not be appointed a trustee. He is not as such incapacitated from being trustee for himself and others; but as a general rule he is not altogether a fit person for the office in consequence of the probability of a conflict between his interest and his duty. ASHIDBAI *v.* ABDULLA (1906).

I. L. R. 31 Bom. 271

——**ss. 81, 83—**

—Trust for a specific purpose—Express trust —Resulting trust—Limitation Act (XV of 1877), s. 10.—Per BATCHELOR, *J.* (*obiter*).—S. 10 of the Limitation Act does not apply where the object of the original trust being uncertain or undiscoverable, a resulting trust arises by operation of ss. 81 and 83 of the Indian Trusts Act, 1882. Whether the resulting trust flow from the invalidity of the declared trust or from the impossibility of ascertaining the declared trust, it is equally a substituted trust, that is, a trust which is created by the law *faut de mieux*, that is as the best arrangement which the law regards as possible in difficult circumstances. This general rule is affected to this extent only, that where there is a trust covering the whole estate and the bequests do not exhaust the estate, the trustees are express trustees of the residue for the heir of the testator. MATHURADAS *v.* VANDRAWANDAS (1906) . **I. L. R. 31 Bom. 222**

——**s. 90—**

See APPEAL, ABATEMENT OF.

I. L. R. 30 Mad. 67

U

UBHAYAPATTOM.

—Malabar Law—Ubhayapattom—Agreement in mortgage perpetually void as a clog on the equity of redemption. An ubhayapattom' is a kanom mortgage. Where from the terms of an ubhayapattom it is clear that the debt was not intended to be extinguished, a covenant for perpetual renewal by the motgagor operates as a clog on the equity of redemption and the add tion of the words 'you shall hold the properties for ever without surrendering them' does not convert such a transaction into an immediate grant of a permanent interest. Such a covenant will be inoperative as a clog on the mortgagor's right of redemption in a mortgage executed before the passing of the Transfer of Property Act and subsequent to 858, on the principles of equity which formed the basis of judicial decisions during that period. NEELAKANDHAN NAMBUDRIPAD *v.* TIRUNILAI ANANTHAKRISHNA AYYAR (1906) . **I. L. R. 30 Mad. 61**

ULTRA VIRES.

See DAMAGES, SUIT FOR.

I. L. R. 34 Calc. 863

See LEASE. . **I. L. R. 34 Calc. 1030**

See LETTERS PATENT, 1865, CL. 12.

11 C. W. N. 663

See RULE 515 A OF THE HIGH COURT.

I. L. R. 34 Calc. 619

—Local Self-Government Act (III of 1885), ss. 139 and 78—Bye-law made under—Authority of the District Board to make the bye-law.—Where a bye-law of a District Board made under s. 139 of the Bengal Local Self-Government Act was in these terms:—"Whoever encroaches on any road by cultivating crops or by ploughing it up for cultivation, or by the construction of any building or structure thereon except by the permission of the Chairman of the District Board, shall be liable to a fine not exceeding Rs. 50, and to a further fine not exceeding Rs. 2 for every day on which the offence is continued:" *Held*, that the bye-law is not *ultra vires* of the District Board which has power under s. 139 read with s. 78 of the Bengal Local Self-Government Act to make such a bye-law. The building of a part of a house over part of a public road without the permission of the Chairman of the District Board is punishable under the bye-law. RAMAUTAR SAHU *v.* ARRAH MUNICIPAL BOARD (1907).

11 C. W. N. 1099

UNCERTAINTY.

See WILL. . **I. L. R. 31 Bom. 583**

UNCONSCIONABLE BARGAIN.

1.—*Circumstances under which relief may be granted by the Court—Undue influence*—A person of the age of some twenty-eight years, the son of a wealthy father, but of profligate habits and greatly in need of money, his father having refused to supply him, executed a bond to secure a sum of Rs. 500, with interest, which amounted to Rs. 37-8-0 per cent. per annum, with six-monthly rests. The bond further contained a stipulation that the borrower should not be empowered to repay the money within three years. And if he did pay within three years, he should nevertheless be obliged to pay three years' interest at the rate mentioned. *Held*, that although it could not be said that the execution of this bond was procured by means of undue influence or that the rate of interest was penal, nevertheless the bargain was an unconscionable bargain against which the Court might properly give relief. The High Court affirmed the decree of the lower Appellate Court which gave the plaintiff the principal sum with simple interest at the rate of 24 per centum per annum. *Madho Singh* v. *Kashi Ram I. L. R. 9 All. 228*; *Kirpa Ram* v. *Sami-ud-din Ahmad Khan*, *I. L. R. 25 All. 284*; *Kamini Sundari Chaodhrani* v. *Kali Prosunno Ghose*, *I. L. R. 12 Calc. 225*; *Kunwar Ram Lal* v. *Nil Kanth*, *L. R. 20 I. A. 112*, and *Rajah Mokham Singh* v. *Rajah*

UNCONSCIONABLE BARGAIN—*concluded.*

Rup Singh, L. R. 20 I. A. 127, referred to. BALKISHAN DAS *v.* MADAN LAL (1907) . . I. L. R. 29 All. 303

2.—*Unconscionable bargain—Contract Act (IX of 1872), ss. 16, 19A—Contract induced by undue influence—Money-lender—Exorbitant rate of interest—Undefended suit—Court's right to interfere—Reasonable rate of interest, what is.*—Under ss. 16 and 19A of the Indian Contract Act the Court has power to interfere and relieve a defendant against what may appear to the Court to be unconscionable transactions. The circumstances in each case must be looked to in order to decide what would be a reasonable rate of interest to allow. POMA DONGRA *v.* WILLIAM GILLESPIE (1907). I. L. R. 31 Bom. 348

UNDERGROUND RIGHTS.

See MINERAL RIGHTS. I. L. R. 34 Calc. 358

UNDER-RAIYAT.

See LANDLORD AND TENANT. I. L. R. 34 Calc. 104

1.—*Civil Procedure Code (Act XIV of 1882), s. 310A—Sale in execution, deposit to set aside—"Person whose immoveable property has been sold"—An under-raiyat under the judgment-debtor—Locus standi.*—An under-raiyat can apply under s. 310A, Civil Procedure Code, as being a person whose immoveable property has been sold in execution of a decree for arrears of rent due in respect of the superior holding. *Narain Mandal* v. *Sourindra Mohan Tagore, I. L. R. 32 Calc 107; Paresh Nath Singha* v. *Nabo Gopal Chattopadhya, I. L. R. 29 Calc. 1; Binodini* v. *Peary Mohan Haldar, 8 C. W. N. 55; Kunja Behary* v. *Sambhu Chandra, 8 C. W. N. 232*, followed in principle. *Abed Mollah* v. *Diljan Mollah, I. L. R. 29 Calc. 459*, dissented from. CHANDRA KUMAR NATH *v.* KAMINI KUMAR GHOSE (1907) 11 C. W. N. 742

2.—*Under-raiyat—Heritability—Bengal Tenancy Act (VIII of 1885), s. 49.* The heirs of an under-raiyat under an annual holding do not acquire an interest in his holding by inheritance. The only right which they have, irrespective of custom or local usage, is to remain in possession of the land until the end of the agricultural year for the purpose of either realising the rent which might accrue during that year or for the purpose of tending and gathering in the crops. *Arip Mondal* v. *Ram Ratan Mondal, 8 C. W. N. 479*, explained. JAMINI SUNDARI DASI *v.* RAJENDRA NATH CHUKERBUTTY (1906) . . 11 C. W. N. 519

UNDIVIDED SHARES IN LAND.

See MAHOMEDAN LAW—GIFT. L. R. 34 I. A. 167

UNDUE INFLUENCE.

See FIDUCIARY RELATIONSHIP. I. L. R. 30 Mad. 169

See UNCONSCIONABLE BARGAIN.

—*Contract Act (IX of 1872, as amended by Act VI of 1899), ss. 16, 74.*—Urgent need of money on the part of the borrower does not of itself place the lender in a position to "dominate his will" within the meaning of s. 16 of the Contract Act (IX of 1872), as amended by s. 2 of Act VI of 1899. *Dhanipal Das* v. *Maneshar Bakhsh Singh, L. R. 33 I. A. 118: I. L. R. 28 All. 570*, distinguished. SUNDAR KOER *v.* RAI SHAM KRISHEN (1906) . . . I. L. R. 34 Calc. 150; L. R. 34 I. A. 9

UNITED PROVINCES COURT OF WARDS ACT (III OF 1899).

——**ss. 9, 35, 47**—

See NORTH-WESTERN PROVINCES LAND REVENUE ACT (XIX OF 1873), ss. 194 (*g*), 203. . I. L. R. 29 All. 589

UNITED PROVINCES LAND REVENUE ACT (III OF 1901).

——**ss. 110, 111, 223 (*k*)**—

See PARTITION. I. L. R. 29 All. 604

——**ss. 147, 227, 228**—

—*III of 1901 (United Provinces Land Revenue Act), ss. 147, 227 and 228 Act No. XLV of 1860 (Indian Penal Code), s. 353—Attachment—Power of Tahsildar to issue warrants of attachment for realization of revenue.—Held*, that a Tahsildar has no power under the United Provinces Land Revenue Act, 1901 to issue a warrant of attachment in order to realize arrears of Government revenue, nor is a warrant issued by a Tahsildar validated by general authority to that effect given to him by the Collector of the District. EMPEROR *v.* RADHE LAL (1907) . I. L. R. 29 All. 272

UNITED PROVINCES MUNICIPALITIES ACT (LOCAL I OF 1900).

——**ss. 82, 87 (3)**—

—*Application for permission to build—Implied permission—Power to erect necessary scaffolding.*—Where application for permission to build has been made to a Municipal Board and the period mentioned in s. 87 (3) of the Municipalities Act, 1900, has expired, the applicant is in the same position as if the erection of the building specified in his application had been formally sanctioned by the Board. A sanction, express or implied, to the erection of a specified building necessarily carries with it a right to put up such ordinary scaffolding as would be necessary under ordinary circumstances for the execution of the work. EMPEROR *v.* GOKUL (1907). . . . I. L. R. 29 All. 737

UNLAWFUL ASSEMBLY.

—Penal Code, s. 143—Dispute amongst joint owners—Unlawful assembly with armed men—Force not actually used—Sentence—Criminal Procedure Code (Act V of 1898), s. 106—Order against one joint owner—Proceeding against the other owner under s. 107, desirable.—Where two parties were entitled to joint possession of a property but one party having been out of possession, their servants (the petitioners) with 30 or 40 other persons went armed with *lathes* to take forcible possession of the property and succeeded in getting possession without having had to use any force:—*Held*, that the petitioners were rightly convicted of an offence under s. 143, Indian Penal Code, but as the masters of the petitioners had a right to possession and as what the petitioners did, though not warranted by law, did not actually lead to a breach of the peace, the sentence ought not to be too severe. That an order under s. 106, Criminal Procedure Code, directing the petitioners to execute bonds to keep the peace for one year was, in the circumstances, justifiable but as that order would have the practical effect of preventing the petitioners and their masters from taking possession of the property, it was desirable that the other side should also be bound down in a proceeding under s. 107, Criminal Procedure Code. BEPIN BEHARI GUHA *v.* PRANAKUL MAJUMDAR (1906).
11 C. W. N. 176

UNLAWFUL CONSIDERATION.

See CIVIL PROCEDURE CODE.
I. L. R. 31 Bom. 552

UNPROFESSIONAL CONDUCT.

See ADVOCATE.

—Advocate—Arrangement with client without intervention of Solicitor—Threat—Compensation.—An advocate of the High Court made an arrangement to do professional work for his client, without the intervention of a Solicitor, at a fee of half the usual charge; and, on another occasion, he wrote to the same client to the effect that he had an offer to work professionally against her (the client) in a case the plaint of which was settled by him for her, and unless she paid him ten gold mohurs (five times the usual fee) for refusing the brief offered he would take up the case against her:—*Held*, that the advocate was guilty of highly unprofessional conduct. S. K. H., an Advocate, *In re* (1907) . . . I. L. R. 34 Calc. 729

UNSOUNDNESS OF MIND.

See INSANITY. I. L. R. 34 Calc. 686

USE AND OCCUPATION.

See PRESIDENCY SMALL CAUSE COURTS ACT. . . I. L. R. 31 Bom. 138

USUFRUCTUARY MORTGAGE.

See AGRA TENANCY ACT (LOCAL No. II) OF 1901, ss. 20, 21, 31.
I. L. R. 29 All. 327

See CIVIL PROCEDURE CODE.
I. L. R. 31 Bom. 527

See TRANSFER OF PROPERTY ACT, ss. 92, 93 . . . I. L. R. 29 All. 481

USURY LAWS REPEAL ACT (XXVIII OF 1855).

See INTEREST. . I. L. R. 29 All. 33

UTBANDI TENANCY.

—Abandonment—Notice—Landlord and tenant—Sale of landlord's interest—Admission by vendor who is a party—Tenant's right to plead that sale was benami.—An *utbandi* tenant, when he ceases to hold the land, is not bound to give any notice of abandonment to his landlord, in order to avoid liability for rent for future years. AMRITA LAL MUKHERJEE *v.* GIRIDHAR GHOSH (1907).
11 C. W. N. 581

UTTERING FALSE COIN.

See COIN. . I. L. R. 29 All. 141

V

VALID SANCTION.

——requisites of—

See SANCTION FOR PROSECUTION.
11 C. W. N. 195

VALUATION OF LAND.

See LAND ACQUISITION ACT, ss. 19, 23.
11 C. W. N. 875

VALUATION OF SUIT.

See APPEAL TO PRIVY COUNCIL.
I. L. R. 34 Calc. 400

See COURT-FEES.

See COURT FEES ACT.

See RESTITUTION OF CONJUGAL RIGHTS.
I. L. R. 34 Calc. 352

See SUITS VALUATION ACT.
I. L. R. 31 Bom. 73

1.—*Jurisdiction—Suit by unsuccessful claimant under s. 283 of the Code of Civil Procedure to obtain the declaration rendered necessary by the order allowing attachment, when there is no distinct claim against judgment-debtor for declaration of title, to be valued at the amount for which attachment is made and not at the value of the property*

VALUATION OF SUIT—*continued.*

—Judgment-debtor not party, merely as such, to claim proceedings in the eye of law.—A claim to attached property under s. 278 of the Code of Civil Procedure being dismissed, the unsuccessful claimant sued for a declaration that the property was not liable to attachment as the property of the judgment-debtor. The judgment-debtor was made a party but no distinct claim was made against him. The value of the attached property was ₹2,775, while the amount for which attachment took place was only ₹1,700:—*Held*, that such a suit was not a suit to obtain a declaration of title to the property, but one for getting rid of the effect of the order disallowing the claim and ought to be valued at the amount for which the property was attached when such amount is less than the value of the property. *Dwarka Das* v. *Kameshar Prasad, I. L. R. 17 All. 69*, distinguished. A judgment-debtor who is not in fact a party to the claim proceedings does not in the eye of law become such by reason solely of his being the judgment-debtor. *Moidin Kutti* v. *Kunhi Kutti Ali, I. L. R. 25 Mad. 721*, followed. KRISHNASAMI NAIDU *v.* SOMASUNDARAM CHETTIAR (1907) . . I. L. R. 30 Mad. 335

2.—*Court Fees Act (VII of 1870), s. 7, para. IV, cl. (c)—Suit for declaring invalidity of document, which plaintiff is not bound to have set aside is not a suit for declaration and consequential relief within section—Jurisdiction. Rule 2 of Rules under s. 9 of Suits Valuation Act.*—In order to determine whether a suit falls under s. 7, paragraph IV, clause (*c*) of the Court Fees Act, the substance of the plaint and not the words which the plaintiff chooses to use, must be considered. A person may rely on the invalidity of a void instrument as against himself without suing for its cancellation; and a suit by him for declaring the invalidity of such instrument will not be a suit for declaration and consequential relief under s. 7, paragraph IV, clause (*c*) of the Court Fees Act. It will be otherwise where the party cannot impeach the arrangement effected by the deed without having it cancelled. A transaction by the Karnavan of a Tarwad is void against members not consenting thereto, if it is in excess of his powers as such Karnavan. In declaratory suits where no consequential relief is prayed, the value for purposes of jurisdiction is the value of the property likely to be effected by the declaration and rule 2 of the rules of the High Court of 26th February, 1903, does not apply to such cases. CHINGACHAM VITIL SANKARAN NAIR *v.* CHINGACHAM VITIL GOPALA MENON (1906).
I. L. R. 30 Mad. 18

3.—*Valuation of suit—Appeal—Forum of appeal—Bengal, N. W. P. and Assam Civil Courts Act (XII of 1887), s. 21—Suit for recovery of land and mesne profits—Interest pendente lite—Court-Fees Act (VII of 1870), s. 11.—Held* by RAMPINI, *A. C. J.*, BRETT, MITRA and WOODROFFE, *JJ.*, that when in a suit for possession of land and mesne profits, which was originally valued at a sum below ₹5,000, and which was instituted in the Court of a Subordinate Judge, but in which the whole amount

VALUATION OF SUIT—*concluded.*

actually found due, inclusive of mesne profits payable by the defendant to the plaintiff, was over ₹5,000, an appeal would lie to the High Court and not to the District Court. Where a plaintiff fixes a certain sum as the amount of his claim only approximately or tentatively, and prays that the amount may be ascertained in the suit, the amount found by the Court to be due to him must generally be regarded as the value of the original suit for the purpose of determining the *forum* of appeal. *Gulab Khan* v. *Abdul Wahab Khan, I. L. R. 31 Calc 365*, approved. *Held*, also, that interest *pendente lite* on the mesne profits should not be taken into account in estimating the value of the original suit. *Held* by MUKERJEE, *J.*, that the rule formulated in *Gulab Khan* v. *Abdul Wahab Khan, I. L. R. 31 Calc. 365*, was too wide and required to be qualified; that where a plaintiff was permitted by s. 50 of the Code of Civil Procedure to put upon the relief claimed by him an approximate or tentative value, and the Court determined the amount which the plaintiff was entitled to recover, such amount, if accepted by the plaintiff as the value of the relief claimed by him, determined the value of the suit and, consequently, the *forum* of appeal, under s. 21 of Act XII of 1887. IJJATULLA BHUYAN *v.* CHANDRA MOHAN BANERJEE (1907) . I. L. R. 34 Calc. 954

VENDOR AND PURCHASER.

—Auction sale under power of sale in a mortgage—Condition of sale depreciatory of mortgagor's title—Solicitor of mortgagee acting for purchaser in preparation of deed of conveyance—Constructive notice Conduct of mortgagees at sale inducing bidders to leave—Knowledge of purchaser of such circumstances—Notice—Proviso in mortgage to protect purchaser—Transfer of Property Act (IV of 1882), s. 69.—At an auction sale under a power of sale in a mortgage on conditions one of which both the lower Courts found to be a depreciatory condition wholly unwarranted by the state of the mortgagor's title, the mortgaged property was knocked down to the appellant who the same day signed a written contract to purchase. In a suit by the purchaser against the mortgagor for possession of the property to which suit the mortgagees were made parties: *Held*, that the purchaser was not affected with constructive notice of the true state of the title by reason of the fact that some days after the contract of sale was completed. he instructed the mortgagees' solicitor to act for him in the preparation of the deed of conveyance, and that the solicitor knew that the condition of sale was unjustifiable The knowledge of the solicitor as to the title was not acquired in the matter for which he was the purchaser's agent and could not be used to upset a transaction of a date before that agency commenced. The sale was therefore not invalid on that ground. The mortgage which was in the English form contained a proviso that upon the exercise of the power of sale "the purchaser shall not be bound to see or inquire whether any default has been made, or otherwise as to the necessity or

VENDOR AND PURCHASER—*concluded.*

expediency of such sale, or that the sale is otherwise improper or irregular, and notwithstanding any such irregularity, such sale shall, as far as regards the safety and protection of the purchaser, be deemed to be within the aforesaid power, and be valid and effectual accordingly, and the remedy of the mortgagor shall be in damages only." It was found by the first Court on the facts that at the sale the mortgagee defendants by themselves or their agents so conducted themselves with reference to the sale that bidders were induced to leave, and that the purchaser was present and had notice of those circumstances. *Held*, that the purchaser was affected with notice of the impropriety of the sale, and bought at his own risk, notwithstanding the proviso in the mortgage and the provisions of s. 69 of the Transfer of Property Act (IV of 18-2), and that these circumstances invalidated the sale. CHABILDAS LALLUBHAI *v.* DAYAL MOWJI (1907) . **I. L. R. 31 Bom. 566; L. R. 34 I. A. 179**

VERDICT OF JURY.

See JOINDER OF CHARGES.
11 C. W. N. 715

VERIFICATION.

See WRITTEN STATEMENT.
11 C. W. N. 871

VILLAGE CHAUKIDARI ACT (BENG. VI OF 1870).

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See CHAUKIDARI CHAKRAN LANDS.
I. L. R. 34 Calc. 564

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WAIVER.

See BOND. . . **11 C. W. N. 903**

See LIMITATION ACT (XV OF 1877), SCH. II, ART. 75. . **I. L. R. 29 All. 431**

See PRIVY COUNCIL, PRACTICE OF.
I. L. R. 34 Calc. 709

—Civil Procedure Code (Act XIV of 1882), ss. 244, 291, 311—Execution sale, brought about by fraud—Waiver of right to object to sale—Plea of waiver when to be given effect to and to what extent Public policy—Circumstances from which waiver to be inferred—Knowledge of rights waived, necessity of proving—Burden of proof—Presumption.—A waiver is an intentional relinquishment of a known right or such conduct as warrants an inference of the relinquishment of such right and there can be no waiver unless the person against whom the waiver is claimed had full knowledge of his rights and of the facts which would enable him to take effectual action for the enforcement of such

WAIVER—*concluded.*

rights. The burden of proof of such knowledge is on the person who relies on the waiver and such knowledge must be made to appear. A presumption of waiver cannot be rested on a presumption that the right alleged to have been waived was known. When it appeared from the proceedings that a judgment-debtor only waived objections to an execution sale on the ground of (*1*) non-issue of fresh sale-proclamations when the sale was adjourned from time to time, and (*2*) inadequacy of price as resulting therefrom: *Held*. that this did not prevent him from attacking the sale on the ground (*1*) that the sale-proclamation had never been issued and had been fraudulently suppressed at the decree-holder's instance and (*2*) that the price realised was inadequate by reason of the decree-holder's fraud. Whether there has been a waiver or not of the rights of a judgment-debtor to object to a sale and to what extent they may have been waived must depend upon the circumstances of each individual case: and the question has to be decided not merely upon the language of the petitions preferred by the judgment-debtor, but with regard to the whole of the proceedings in the case and particularly with reference to the order made by the Court upon the petitions. The right of waiver is subject to the control of public policy which cannot be contravened by any conduct or agreement of the parties and an agreement which seeks to waive an illegality may be void on grounds of public policy or morality. *Quære*: Whether, if it were made out that the judgment-debtors had in fact waived all possible rights to object to the validity of the sale, a Court of justice would give effect to the plea of waiver when the sale was brought about by fraud upon the processes of the Court. DHANUKDHARI SINGH *v.* NATHIMA SAHU (1907). . . . **11 C. W. N. 848**

WAJIB-UL-ARZ.

See LAND-HOLDER AND TENANT.
I. L. R. 29 All. 203

See PRE-EMPTION . **I. L. R. 29 All. 295**

WAKF.

See MAHOMEDAN LAW—ENDOWMENT.

—Statement in a will that the testator had at a former time given away or set apart property to charity—Not a testamentary devise—Absence of actual delivery—Reasonably clear intention.—A mental act although afterwards sufficiently expressed in conduct will not, unless clothed in appropriate words, create a *wakf*. *Per* CURIAM.—We do not think that a mere statement in a will of some gift in the past can be referred back to the date, still undetermined, when that gift is afterwards alleged to have been made, or that such a narrative statement can in any view be an adequate substitute for the oral declaration of dedication to God, which the Mahomedan law appears to us imperatively to require, synchronously with the act of dedication itself. There is a plain distinction between giving

WAKF—*concluded.*

in charity and declaring that one has given in charity. And for the purpose of fixing the origin of the *wakf*, if there was a *wakf* at all, the mere statement in a will that at some past date the testator had set apart such and such funds for charitable objects is of comparatively slight value. Where there has been no actual delivery, a reasonably clear declaration is necessary to create a *wakf*. BANUBI v. NARSINGRAO (1906) . I. L. R. 31 Bom. 250

WARRANT OF ARREST.

See PRIVATE DEFENCE, RIGHT OF.
11 C. W. N. 836

WATER CESS.

See CONTRACT ACT (IX OF 1872), s. 70.
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See MAHOMEDAN LAW.
See PENSION. I. L. R. 30 Mad. 266

WIFE, SAFETY OF.

See RESTITUTION OF CONJUGAL RIGHTS.
I. L. R. 34 Calc. 971

WILL.

Col.
1. CONSTRUCTION OF WILL . . . 411
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3. REVOCATION OF WILL . . . 412
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1. CONSTRUCTION OF WILL.

1.—*Will—Appointment by general bequest—Power created subsequently to the will Indian Succession Act (X of 1865), s. 78—Civil Procedure Code (Act XIV of 1882), s. 527, case stated under.*—A general power of appointment may be well exercised by a will executed previously to the creation of the power and that too by a mere residuary gift. DINSHAW SORABJI v. DINSHAW SORABJI (1907) . . . . I. L. R. 31 Bom. 472

2.—*Will—Construction of will—Uncertainty—Bequest for purposes of popular usefulness or for purposes of charity.*—By her will *N*, after making various bequests, bequeathed the residue of her estate as follows:—"As to whatever immoveable (and) moveable (property) a d property in cash belonging to me may be in excess or may remain over as surplus after a disposition shall have been made in accordance with what is stated in the clauses above written, my abovementioned six executors are to make use of the same in such manner as they may unanimously think proper for purposes of popular usefulness or for purposes of charity. And I give to them (*i.e.*) my abovementioned trustees full authority to use the same in that manner.' *Held*, that the gift of the residue was bad for uncertainty. *Runchordas* v. *Parvatibai, I. L. R. 23 Bom. 725*, relied on. TRIKUMDAS v. HARIDAS (1907).
I. L. R. 31 Bom. 583

2. VALIDITY OF WILL.

3.—*Execution under pressure—Free agency—Importunity—Indian Succession Act (X of 1865), s. 48, Illus. (g) and (h).*—A will is not invalidated on the ground of its having been executed under pressure, unless the pressure was such as the testator could not resist. Illus. (*g*) and (*h*) of s. 48 of the Succession Act practically lays down the rule which should guide all Courts on the question of importunity. They indicate the law as stated in "Williams on Executors and Administrators." JAGNESHWARI SAHA v. UGRESHWARI DASSYA (1907).
11 C. W. N. 824

3. REVOCATION OF WILL.

4.—*Will—Separated Hindu domiciled in the United Provinces—Revocation of will—Evidence—Presumption.*—A separated Hindu residing at Meerut executed a will on the 20th of January, 1885, and registered the same in the office of the District Registrar on the 22nd of January of the same year. The testator died on the 16th of October, 1899. On the 5th of July, 1902, a suit was instituted by certain persons who claimed the property of the testator as his next of kin against the Collector of Meerut who had taken possession of the property as trustee under the terms of the will for purposes therein set forth. The plaintiffs alleged that the testator had revoked the will of the 20th of January, 1885, and tendered evidence to prove that on a certain occasion the testator had said that he had revoked his will. On the death of the testator the original will was not to be found; but, on the other hand, it was shown that persons interested in the disappearance of the will had had access to the house of the testator since his death. *Held*, that evidence that the testator had said that he had torn up the will was not admissible. *Staines* v. *Stewart and Jones, 2 Sw. & Tr. 320, Doe dem Shallcross* v. *Palmer, 16 Q. B. 757*, and *Keen* v. *Keen, 3 P. & D. 105*, referred to. *Held*, also, that the presumption of English law that if a will is traced to the testator's possession and is not forthcoming at his death it has been destroyed by him, *animo revocandi*, would, at least, not be so strong in India as in other countries where wills are

WILL—*concluded.*

taken greater care of, and under the circumstances disclosed by the evidence in the present case did not arise at all. *Podmore* v. *Whatton, 3 Sw. & Tr. 449; Finch* v. *Finch, 1 P. & D. 371,* and *Brown* v. *Brown, 8 E & B. 876,* referred to. SHIB SABITRI PRASAD *v.* THE COLLECTOR OF MEERUT (1906) . . . . I. L. R. 29 All. 82

WITHDRAWAL OF SUIT.

See CIVIL PROCEDURE CODE.
I. L. R. 31 Bom. 10

WITNESS.

See APPROVER.

See EVIDENCE.

See DEFAMATION. I. L. R. 29 All. 685

See SANCTION FOR PROSECUTION.
11 C. W. N. 909

1.—*Child witness—Evidence Act (I of 1872), s. 118—Witness, competency of—Child witness—Mode of examination—Competency to be tested before examination as to res gestæ.*—Before a child of tender years is asked any question bearing on the *res gestæ*, the Court should test his capacity to understand and give rational answers and his capacity to understand the difference between truth and falsehood. The Judge must form his opinion as to the competency of a witness before his actual examination commences. SHEIKH FAKIR *v.* EMPEROR (1906).
11 C. W. N. 51

2.—*Prosecution of witness—Defamation.*—A prosecution for defamation under s. 499 of the Indian Penal Code will not lie against a witness in respect of any statement made by him in the course of giving evidence, even if such statement may be not relevant to the matter under inquiry. *Baboo Gunnesh Dutt Singh* v. *Mugneeram Chowdhry, 11 B. L. R. 321,* followed. *Dawkins* v. *Lord Rokeby, L. R. 7 H. L. 744; Abdul Hakim* v. *Tej Chandar Mukerji, I. L. R. 3 All. 815;* and *Isuri Prasad Singh* v. *Umrao Singh, I. L. R. 22 All. 234,* referred to. EMPEROR *v.* GANGA PRASAD (1907) . I. L. R. 29 All. 685

WITNESSES, CLASSIFICATION OF.

See MURDER. 11 C. W. N. 1085

WORDS.

——"A decree for money against several persons"—

See CIVIL PROCEDURE CODE.
I. L. R. 31 Bom. 308

——"Adult"—

See PUBLIC DEMANDS RECOVERY ACT (BENG. I OF 1895), ss. 10, 31.
I. L. R. 34 Calc. 787

WORDS—*continued.*

——"Annual value"—

See CESS, ASSESSMENT OF.
11 C. W. N. 1053; I. L. R. 35 Calc. 82

——"Arms"—

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I. L. R. 34 Calc. 749

——"As determinable"—

See SUITS VALUATION ACT.
I. L. R. 31 Bom. 73

——"Authority competent in this behalf"—

See CIVIL PROCEDURE CODE.
I. L. R. 31 Bom. 413

——"Certified purchaser"—

See EXECUTION OF DECREE.
I. L. R. 31 Bom. 61

——"Coin"——

See PENAL CODE, s. 230.
I. L. R. 29 All. 141

——"Court"—

See COMMISSIONER FOR EXAMINING WITNESS. . . . 11 C. W. N. 909

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 476.
I. L. R. 34 Calc. 551

——"Current year," meaning of—

See SALE FOR ARREARS OF REVENUE.
I. L. R. 34 Calc. 381

——"Decree"—

See APPEAL. I. L. R. 34 Calc. 584

——"Dharmam"—

See HINDU LAW—WILL.
I. L. R. 30 Mad. 340

——"Election"—

See BOMBAY MUNICIPAL ACT.
I. L. R. 31 Bom. 604

——"Final"—

See SALE FOR ARREARS OF REVENUE.
I. L. R. 34 Calc. 677

——"Heir as such"—

See CIVIL PROCEDURE CODE.
I. L. R. 31 Bom. 105

——"In respect of the same matter"—

See CIVIL PROCEDURE CODE.
I. L. R. 31 Bom. 516

——"In the exercise of his official functions"—

See PENAL CODE. I. L. R. 31 Bom. 335

WORDS—*continued.*

——"Issue of notice"—

See LIMITATION ACT (XV OF 1877), ART. 179 (5), SCH. II.
I. L. R. 30 Mad. 30

——"Judgment"—

See LETTERS PATENT, 1865, CL. 15.
I. L. R. 30 Mad. 311

——"Knowledge of the nature of the Act"—

See INSANITY. . I. L. R. 34 Calc. 686

——"Living in adultery"—

See ADULTERY. I. L. R. 30 Mad. 332

——"Magistrate of the first class"—

See EMIGRATION ACT.
I. L. R. 31 Bom. 611

——"Motive or reward"—

See PENAL CODE. I. L. R. 31 Bom 335

——"Offence," trial of—

See CATTLE TRESPASS ACT (I OF 1871), S. 20, SCH. II. I. L. R. 34 Calc. 926

——"Owner" of mines—

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——"Property"—

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11 C. W. N. 105 ; I. L. R. 35 Calc. 82

——"Resign"—

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——"Specific moveable property"—

See ZURPESHGI LEASE.
11 C. W. N. 862

——"Suit"—

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See PENAL CODE, S. 153.
I. L. R. 29 All. 569

——"Year," meaning of—

See SALE FOR ARREARS OF REVENUE.
I. L. R. 34 Calc. 381

WRITTEN STATEMENT.

See PRACTICE. . I. L. R. 34 Calc. 443

—*Civil Procedure Code (Act XIV of 1882), ss. 115, 146 Written statement, received and not objected to, though not signed or verified according to law—Objection taken on appeal, after case fought out on merits.*—It is not obligatory upon a defendant to put in a written statement. He may do so if he likes. S. 146 of the Civil Procedure Code contemplates that issues may be settled whether there was a written statement or not, though it is not obligatory on the Court to frame issues if the defendant makes no defence. Where a written statement filed on behalf of the defendant was actually received by the Court and no application was made by the plaintiff to have it taken off the file on the ground of its not being signed and verified by the defendant as required by s. 115 of the Civil Procedure Code, and the question was raised for the first time in appeal after the case had been fought on in the first Court on the footing of a proper written statement. *Held*, that in such circumstances the Appellate Court was not justified in decreeing the suit on the footing that there was no defence, by reason of the written statement not being signed or verified by the defendant, and the case should have been tried on the merits. RUSTUN GAZI *v.* TARA PROSANNA CHOWDHURI (1907) . . . . . 11 C. W. N. 871

WRONGFUL CONFINEMENT.

—*Penal Code (Act XLV of 1860) s. 342—Officer arresting and confining judgment-debtor in house of judgment-creditor not guilty of wrongful confinement.*—An officer arresting a judgment-debtor under a warrant which directs him to produce the judgment-debtor when arrested before the Court with all convenient speed, is not guilty of wrongful con-

WRONGFUL CONFINEMENT—*concluded.*

finement if, having effected the arrest when the Court is not sitting, he confines him in the house of the judgment-creditor. His duty is to produce the judgment-debtor at the next sitting of the Court and until he so produces him, he is responsible for his safe custody. EMPEROR *v.* SAMUEL (1906).

I. L. R. 30 Mad. 179

WRONGFUL DISMISSAL.

See DAMAGES, SUIT FOR.

I. L. R. 34 Calc. 863

Z

ZURPESHGI LEASE.

—Limitation Act (XV of 1877), Sch. II, Arts. 48, 109—Suit to recover rents realised by zurpeshgidar after expiry of lease—Limitation—"Specific moveable property," meaning of—Suit of Small Cause Court nature of less than ₹500 in value Order of remand, appeal from—Civil Procedure Code (Act XIV of 1882), ss. 586, 588, cl. (28).—A suit brought by an owner of land for the recovery from *zurpeshgidars* of rents realised by the latter from the tenants after the expiry of the *zurpeshgi* lease, is governed by Art. 109 of Sch. II of the Limitation Act and not by Art. 48. By "specific moveable property" in Art. 48 is meant property which can be specified by the delivery of the identical subject and does not cover money. *Rameshar Chaubay* v. *Matabhikh, I. L. R. 5 All. 343*, dissented from. *Essoo Bhayaji* v. *The Steamship 'Savitri,' I. L. R. 11 Bom. 133; Jagjivan* v. *Gulam Jilani, I. L. R. 8 Bom. 19*, followed. AGANDH MAHTO *v.* KHAJAH ALIULLAH (1907).

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